

# DECOLONISING INDIGENOUS INTELLECTUAL AND CULTURAL RIGHTS IN HERITAGE INSTITUTIONS: A SURVEY OF POLICY AND PROTOCOL IN SOUTH AFRICA

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## ABSTRACT

This article analyses the protection of indigenous knowledge (IK) in South Africa, exploring if and how the rights of indigenous peoples are insulated from pillage by existing policy and protocol frameworks in cultural heritage institutions. The article examines how policy and protocol in these institutions, the socio-economic



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realities within indigenous communities and legislative bottlenecks bear on the digitisation enterprise in the country. The study used the Delphi method to collect and analyse data. The major finding of the study was that, in an attempt to safeguard indigenous intellectual and cultural rights, some cultural heritage institutions are seeking to bridge the gap between Western legal requirements and indigenous intellectual rights by the inclusion of specific policy measures which take on board indigenous interests and concerns. The major themes that emerged from the study have cultural, legislative and structural underpinnings. These themes outline the fundamental characteristics of the policies and protocols of digitisation initiatives in the country. The study recommends that heritage institutions in South Africa should recognise their influence as socio-cultural agents and actively submit 'decolonising' recommendations for statutory development. It also urges these institutions to continue building consultation networks with various indigenous stakeholders in order to improve best practice.

**Keywords:** culture, decolonising methodology, Delphi method, Digital Innovation South Africa, digitisation, indigenous knowledge, intellectual property rights, policy

## 1. INTRODUCTION AND BACKGROUND

An increasing number of cultural heritage institutions in South Africa have embarked on digitisation as a means of preservation and improving access to their collections (Sithole 2006). As some of these institutions hold substantial collections of indigenous material, it is essential that they build digital collections in consultation with indigenous communities, putting in place acceptable guidelines, policies and practices which safeguard indigenous interests (Nakata 2002). In this way, these institutions can be seen as a social reflection of the so called 'de-colonising methodologies' which are becoming common in recent literature on indigenous issues (Nakata 2002; Wareham 2001).

This article examines the protection of indigenous knowledge (IK) related materials in heritage institutions in South Africa. Using the Digital Innovation South Africa (DISA) as a case study, the article explores how socio-cultural realities within indigenous communities and legislative bottlenecks at national and international levels bear on the digitisation enterprise in the country as portrayed through DISA's policy documents, information around intellectual property rights (IPRs), and/or protocols made available on the Internet by the institution.

## 2. PROBLEM STATEMENT

The digitisation of IK items held in heritage institutions in South Africa presents an interesting dichotomy of cross-cultural relationship between an ideology from a liberal Western point of view and an indigenous worldview (Hammersmith 2008;

Sithole 2006). Significantly, the history of how indigenous items came to be held in cultural heritage institutions in the country can itself be contentious, as the material was often appropriated in the colonisation or apartheid period when indigenous communities may have had limited control over what was collected (Sullivan 2002).

While in many Western eyes, an indigenous item can be legally owned by the heritage institution once it has been digitised, there is research which suggests that some cultural heritage institutions are now open to the process of ‘decolonising’ indigenous items in their custody by integrating indigenous concerns into their policy framework (Sullivan 2002; Wareham 2001). Although there are studies of particular digitisation projects and also international indigenous forums which highlight this positive trend, the literature still shows a need for the development of new policy standards and protocols that are sympathetic to indigenous socio-cultural realities across the burgeoning digitisation enterprise in predominantly indigenous countries, such as South Africa (Kawooya 2006; Nakata 2002; Nakata et al. 2008; Sullivan 2002; Wareham 2001).

### 3. RESEARCH OBJECTIVE AND QUESTIONS

The objective of the study, therefore, was to explore the digitisation landscape in the country, specifically by investigating the legal and socio-cultural influences in the development of policy, the accessibility of policies on the Internet, and finally through analysis of the data collected, to draw some conclusions on the current practices of cultural heritage organisations.

The article is premised on the following question: What are the basic characteristics of policies and protocols of cultural heritage institutions in South Africa in relation to the digitisation of IK?

Using the case study under review, the article seeks to provide answers to this question via the following sub-questions:

- What are the socio-cultural issues that are considered in digitising IK within DISA?
- How accessible to the public are DISA’s digitisation policies on the Internet?
- What protection exists for the cultural and IPRs of indigenous communities and is this clearly reflected in DISA’s policy protocols?

### 4. CONTEXTUAL SETTING OF THE DISA INITIATIVE

DISA is a digital archival institution in South Africa that holds a huge collection of indigenous material relating to the liberation struggle in the country. DISA makes use of modern information and communications technologies (ICTs) to ensure the efficient and economical delivery of this information to students, scholars,

researchers and the wider community, locally and globally. Thus, it plays a crucial role in the development of a digital learning environment, in meeting the needs of an increasingly mature student profile, in the growing needs of distance education, and for lifelong learning (DISA 2013).

DISA also plays a leading national role in ensuring that internationally acceptable standards are used for systems, architecture, metadata, indexing and retrieval, and in developing expertise in digital technology through the training of librarians and archivists. DISA's (2013) involvement with partner institutions enables this transfer of digital imaging skills to several remote capture sites in the country.

Significantly, DISA makes available a comprehensive set of guidelines and standards that assist smaller institutions in the process of building online resources. It has also provided technological expertise, training and hosting of content for several networked projects in South Africa and the wider Southern Africa region (DISA 2013).

## 5. CONCEPTUAL FRAMEWORK

A significant influence on the study was the literature of what is termed as 'decolonising methodologies' which appears in a wide range of different academic disciplines: cultural studies, historical studies, anthropology, archaeology, ethnography, theology and increasingly in the field of Library and Information Science (LIS) (Nakata 2002). This methodology was developed by predominantly indigenous scholars who have contributed to their various fields of study from an indigenous perspective (e.g., Nakata 2002; Smith 1999; Wareham 2001). The methodology challenges conventional Western ways of knowing and researching and calls for a new agenda of indigenous research. According to Smith (1999, 18), 'decolonization' is concerned with having 'a more critical understanding of the underlying assumptions, motivations and values that inform research practices'.

The methodology deconstructs the assumptions, motivations and values that inform Western research practices (i.e., the methodologies, the theories and the writing styles) in which Western research is viewed as a scientific and 'objective' process. Under this Western paradigm, colonisers, adventurers and anthropologists researched the indigenous 'other' through their 'objective' and 'neutral' gaze. The methodology problematises the premise that Western research was conducted for the greater good of all humankind. It questions the ways and the spirit in which data was collected around the colonised world, guided by notions of classification and progressive evolution of humankind, which reflected less the cultural realities of the colonised, than Western constructions of gender, race and class. The main concern of the theory, therefore, is to inspire indigenous peoples as researchers by articulating a new indigenous research agenda which aims to replace former Western academic methods.

The theory echoes Ngugi Wa Thiong'o's (1986) work and builds on the Kenyan writer's thesis that colonialism more than imposes control over peoples' lands and resources through military conquest and political dictatorship. Imperialism also dominates the mental universe of the colonised and continues to do so long after political independence is gained. According to Wa Thiong'o (1986), 'decolonisation', in its conventional sense is a euphemism that only describes the formal handing over of the instruments of government, when in reality it must be a long-term process involving the cultural, linguistic and psychological divesting of colonial parameters (Nakata 2002; Smith 1999).

Proponents of the 'decolonising methodology' describe how Western travellers' representations of indigenous peoples were reported as the authoritative representation of the 'other', thereby framing the wider discourse and attitudes towards indigenous peoples. Their stories became accepted as universal truths, marginalising the true stories of the indigenous 'other'. Nakata (2002, 285) describes this as 'research through imperial eyes'. Nakata's words are significant for the study because they are an important reminder of the power of research and representation. Moreover, his comments highlight the need for researchers to critique their own 'gaze' and to reflect on the potential for their representations to be accepted as the 'truth', while alternative readings are deliberately marginalised. Western culture has frequently identified itself as the ethnocentric centre of 'legitimate' knowledge (Nakata et al. 2008). This framework, however, critiques the dominant Western discourses of knowledge and objectivity by demonstrating how Western stories and 'regimes of truth' are situated within a particular cultural, social system that needs to be 'decolonized' (Nakata et al. 2008).

In other words, Western research brings with it a particular set of values and conceptualisations of time, space, subjectivity, gender relations and knowledge. This means that, Western research is encoded in imperial and colonial discourses that influence the researcher's gaze. By investigating the critical issues these indigenous scholars raise, the study hoped to provide insight into various cross-cultural issues which bear on the digitisation of IK in South Africa and see if they are adequately addressed in the policy documents of heritage organisations, such as DISA.

## 6. LITERATURE REVIEW

The literature review discusses two important themes pertaining to the digitisation of IK in South Africa, namely: (1) the need for documentation of IK; and (2) the digitisation landscape in South Africa.

### 6.1. The need for documentation of IK

In the current article, IK will be understood as the 'knowledge acquired over generations by communities as they interact with their environment' (Chisa 2012,

22). In South Africa, IK is part and parcel of the culture and history of indigenous South Africans. It ranges from 'soil and plant taxonomy, cultural and genetic information, animal husbandry, medicine and pharmacology, ecology, zoology, music, arts, architecture to social welfare, governance, conflict management, and many others' (Chisa 2012, 22).

Since IK is mostly stored in people's minds and passed on through generations orally rather than in written form, it is vulnerable to rapid change (Sithole 2006). Development processes like rural to urban migration and changes to population structure as a result of famine, epidemics, displacement or war may all contribute to loss of IK. Even in remote areas, the powers which push global content (such as formal education, electronic media and advertising to mention just a few) are stronger than those pushing local content (Greyling 2007). This means that IK in the country faces imminent extinction unless it is properly documented, preserved and disseminated (Nyumba 2006). One way to achieve this is through the process of digitisation (Burtis 2010).

Digitisation can be defined as the conversion of analogue media to digital form. The original source material might be printed text or images and could also be audio-visual (Smith 1999). From an LIS perspective, digitisation often increases demand for access to the original item, as awareness of what is held in a collection increases (Smith 1999). However, while digital technologies may present opportunities to increase access to documentary heritage, they also present many challenges in relation to access, preservation and IPRs (Kawooya 2006). Moreover, 'digitisation often raises expectations of benefits, cost reductions and efficiencies that can be illusory' and, without a firm policy framework, these expectations have the potential to put at risk the collections and services which libraries and archives have provided for decades (Nakata 2002).

## 6.2. The digitisation landscape in South Africa

Research in the field of digitisation in South Africa can be divided into two main categories: law and policy, and the societal influences such as the historical, political and philosophical milieu in which the digitising enterprise is located (Nakata 2002; Sullivan 2002).

### 6.2.1. Law and policy

The study examined not only what is deemed 'legal' in terms of IPRs but also the cultural expectations of the creators and users of IK (Seadle 2002). A fundamental issue in intellectual property law is that it advocates protection for the individual owner, and not for community owned expressions. However, research in the field of IK has raised concerns about this ideological tension, and many indigenous people are increasingly pushing for a change of laws, guidelines and policy at institutional,

national and international levels, so as to address these concerns (Nakata 2002; Sullivan 2002).

Under current South African law, knowledge and creative ideas which are not 'protected' by the IPRs regimen fall under the 'public domain'. This means that they are readily accessible by the public (Sithole 2006). Yet, historically, indigenous communities in Africa never used IPRs to protect their cultural and intellectual property (Sithole 2006). Thus, despite the presence of customary law, which for time immemorial has been used to govern the use of IK, indigenous material is often treated as if it is perpetually in the public domain (Janke 2005).

Further, what may legally deemed to be in the public domain for one culture can be 'sacred or sensitive' for another (Derlon and Mauzé n.d., 2). How do cultural heritage institutions in South Africa then synergise what is 'legal' to be digitised, with what is culturally sacred or sensitive? This dichotomy is still vexing and future research can contribute to the literature regarding the importance of the correct use of IK in the custody of heritage institutions such as DISA and the consequences of it being extrapolated to the digital context (Janke 2005).

There are some organisations, especially at international level, which have made some effort to safeguard indigenous cultural and intellectual rights. These include the World Intellectual Property Organisation (WIPO), the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO). Two key reports, specifically instigated by WIPO, have explored IPRs in relation to cultural materials in the South Pacific (Talakai 2007) and North America (Skrydstrup 2006). These two reports are important in the context of the study as they are the first examples of growing cross-institutional surveys which are taking place in this field.

### 6.2.2. Societal influences

The relationships between indigenous and Western groups of people vary from country to country (Nakata 2006). However, the colonial nature of cultural heritage institutions in Africa provides an interesting window regarding the ideology and evolution of these institutions. It is worth noting that IK has only recently been embraced by Western science especially in the field of medical knowledge (Nakata 2002; Reddy 2006). In the human sciences, IK has also been elevated in light of the increasing recognition of social and cultural diversity in the world (Reddy 2006). This ideological evolution, although gradual, is deemed by some to be a process of 'de-colonisation' and relies on indigenous people themselves reclaiming misappropriated items from the past. As such, some scholars see digitisation as a positive trend in that it has the potential to link indigenous cultural information with indigenous communities (Nakata, Byrne and Nakata 2005).

Further, there is a notable contrast in the nature and tone of IK research conducted by Western scholars on the one hand and that conducted by other researchers

especially from Australia, New Zealand, Latin America and Africa on the other. These differences mainly arise due to the latter countries' experience and evolution as 'colonies'. Also a large portion of IK research in these countries is written from an indigenous perspective mostly by indigenous scholars (Nakata 2002; Reddy 2006).

Hence, there are differing viewpoints regarding the appropriation of IK based on geographical locations around the world which needs further investigation. Much of the scholarship on this matter is based on case studies such as Faulkner and Lewincamp (2003) and Nakata et al. (2005). There is an obvious need to link, collate and consider the findings of these studies in a global context.

### 6.2.3. Political and historical influences

There is substantial literature in the area of the political and historical development of cultural heritage institutions in former colonies. The work of Nakata (2002) has been particularly important to this study as it helps in clarifying the understanding of this political and historical backdrop. Nakata (2002) observes that the idea of the 'public space' which was constituted by the 1850 Library Act in Britain created a political technology which was passed onto colonial archives and libraries in various progressions. For example, local colonial libraries in Africa had a large amount of literature on 'anthropologisation' of indigenous communities which in-turn encouraged colonial cultures to identify and create their own unique self identities (Nakata 2002).

However, this colonisation and appropriation of IK is not without conflict and it is this conflict which is at the centre of the study. That is, the Western liberal democratic ideal that information is for all and, therefore, access should be open, versus the ideology from an indigenous perspective that some knowledge should be treated more protectively as suggested by Sullivan (2007). Other indigenous scholars have investigated this ideological tension between Western and indigenous viewpoints on this matter. This is an immensely interesting and thought provoking area within the broader field of LIS which needs further investigation (Nakata et al. 2005).

### 6.2.4. Philosophical influences

The digitisation process also raises issues about the nature of the digital product itself (Hoffman 2006; Russell 2005). Does it have the same properties as the original object? In several recent scholarly works, this issue is investigated, and important questions are raised such as: 'How do we digitise material taking into account its metaphysical as well as its digital life?' (Sullivan 2002, 3).

However, Brown (2007) notes that technological advancement is distinct from cultural values claiming that indigenous cultures have always been evolving and appropriating different technologies. Other than this example, philosophical debates



around the nature of a digitised object are otherwise surprisingly sparse and would benefit from further research.

## 7. METHODOLOGY

The study applied the Delphi technique (Skulmoski, Hartman and Krahn 2007) to obtain information around the digitisation of indigenous objects in South Africa's heritage institutions by investigating legal and socio-cultural influences which bear on the development of policy. The DISA initiative was used as a case study to gather more detailed information. The population of the research was selected purposively because of its expertise and ability to answer research questions (Hsu and Sandford 2007). A series of questionnaires consisting of a number of items regarding the research problem were circulated to a pre-selected group of experts. Statements regarding the topic were generated, based on the literature and on the initial opinions of experts in the field. The questionnaires were designed to elicit and develop individual responses to the questions posed and to enable the experts to refine their views as the group's work progressed (Keeney, Hasson and McKenna 2000). The process was repeated in three iterations in order to gradually produce consensus amongst the group or, at least, to establish responses with a degree of stability.

The basic premise of the Delphi technique is that experts have the best idea of what the future may bring. Thus, unlike a typical user survey, the validity of a Delphi study does not depend on the number of participants polled but rather on the expertise of the panel who participate (Hanafin and Brooks 2005; Wildemuth 2009). Thus, it was clear to the researchers in this study that the consideration of members for the Delphi panel is critical since effective selection will maximise the quality of the responses which in turn will enhance the credibility of the study (Keeney, et al. 2000). The experts in the study included an IPRs expert and academics with research interests in indigenous knowledge systems (IKS) and/or digital archiving. The cumulative expertise was relevant and satisfied specific needs of this study. Initially, 12 potential panellists were identified, but four declined to participate due to personal reasons, while eight agreed to take part. However, four panellists did not return their first round questionnaires, despite follow-up, and only four of the anticipated eight panellists completed all the questionnaires. The resultant panel size may raise questions regarding the validity of the study.

However, in a Delphi study conducted by Akins, Tolson and Cole (2005, 116–117), the researchers point out that there is 'still no clear identification or agreement as to what constitutes a sufficient number of Delphi survey participants to ensure stability of results'. Although Akins et al. (2005, 118) identify only a few Delphi studies in the Health Services with fewer than ten participants, they argue that 'sample size in Delphi studies has been researcher and situation specific, and more often than not, convenience samples have been chosen dependent on the availability

of experts and resources'. In other words, no standards have been established in any methodologically acceptable way and the current literature only puts forward empirical choices on Delphi expert sample sizes made by individual researchers, such as convenience, purposive, or criterion sampling (Keeney et al. 2000). Based on the results of their study, Akins et al. (2005, 118) advise that 'the response characteristics of a small expert panel in a well defined knowledge area are stable in light of augmented sampling'. This advice is particularly relevant for conducting Delphi surveys in IK, in IPRs and in digitisation fields in Africa where there is a very limited pool of qualified experts. Akins et al. (2005, 115–118) conclude by noting that reliability in a Delphi study may be obtained with a panel of a relatively small number of Delphi experts and that 'a small expert panel from a limited field of study may be used with confidence'.

While it was anticipated that at least eight panel members would participate in the study, the data collected from the four remaining panel members was rich and varied and consensus was reached on the majority of issues. The number of local experts in the fields under investigation who met the study requirements was limited, and although a better response rate would undoubtedly have further enhanced the reliability of the study findings, the researchers decided to make do with the small number of competent panellists who were willing to participate. The main concern in the selection of the Delphi panel for the study, therefore, was to capture relevant expertise while at the same time ensuring representativity in the sampling process. In other words, the selection of panellists was tailored to suit the issues under investigation although the experts were drawn from various backgrounds within the subject area under discussion. Secondary data was also used to corroborate panel responses with issues under investigation.

The collected data was then analysed by open coding. In order to identify major themes, the labelling and categorising of phenomena was done as indicated by data. The major categories, broadly identified as 'enabling policy', 'the digital divide', 'access to the digitised material' and 'legal and cultural issues' were further broken down into smaller themes.

## 8. RESEARCH FINDINGS

The Delphi panel's value judgements regarding the case study highlighted key themes arising from the research question, in addition to the many critical issues highlighted in the literature review, pertaining to the digitisation of IK. The broad categories and themes in question were as follows:

- a. Cultural influences
  - Consultation
  - Organisational culture

- Perception of the organisation as a socio-cultural agent for change
  - Perceptions of use of digitised items
- b. Structural influences
- Accessibility of policy
- c. Legislative influences
- Indigenous IPRs

What follows is a discussion of each of the above issues as they pertain to the Delphi panel's comments, with regard to DISA's digitisation initiative.

## 8.1. Cultural influences

This category relates to the first sub-question of the study: What are the socio-cultural issues that are involved in digitising IK in South Africa's heritage institutions? The question is the basis for attempting to examine the relationship between policy within the institution and the interests of indigenous communities. During the coding of the data, the following four main themes emerged.

### 8.1.1. Consultation

A recurring theme across the policy and protocol documents examined was that of consultation. Consultation around the proper treatment of digitised objects may occur not only between the institution and indigenous groups, but also with other stakeholder such as indigenous scholars, non-governmental organisations and civil liberty groups (Nakata 2002; Reddy 2006). Panellists in the study agreed that these stakeholders can play an important role in articulating the indigenous point of view and raise any indigenous concerns for policy creation at the institution. This can guide not only users of the collection, but the management of indigenous records as an evolving and continuing process (Nakata 2002; Reddy 2006). Panellists also noted that the creation of collaborative programmes might result in digitising projects that communities can use as tools of social development rather than projects serving only the elite.

Seen from that perspective, consultation reflects the varying relationships between cultural heritage institutions, indigenous communities and other role players. This relationship is based on a shared history of change; from a time of colonialism and appropriation to a 'de-colonisation' process where control over indigenous heritage items has to shift (Nakata 2002; Wareham 2001).

Thus, while there may be no 'best practice' of consulting with indigenous stakeholders in South Africa across organisational boundaries, some broad themes

which institutions can adapt in their policy documents may include the following (Nakata 2002):

- statement of importance of involvement with indigenous groups and/or indigenous experts; and
- provision of the institution's contact details for relevant indigenous groups to discuss issues, and provision of a network of support for the communities.

At DISA, consultation seemed to have been undertaken by varying degrees of importance. The issue was implied in policy documents on the Internet and, as noted earlier, the organisation has compiled a set of guidelines and standards that assist smaller institutions in the process of building online resources (DISA 2013). However, the study identified no direct reference to 'consultation' with indigenous communities or indigenous stakeholders in the organisation's policy guidelines.

### 8.1.2. Organisational culture

Policy and protocol documents can prove to be an interesting window into an institution's organisational culture. Indeed, as noted above, the bigger and more financially viable institutions can be resources in themselves by advising smaller organisations which would not be able to invest the time or resources into constructing a model for policy development in relation to their indigenous artefacts (Nakata 2002).

DISA is an example of this model given the amount of guidelines it produces and its community work to promote best practice. DISA's policy and protocol framework is comprehensive and the archive is a leading advocate in South Africa for the digitisation and care of IK (DISA 2013). DISA provides technological expertise, training and hosting of content for several smaller projects in South Africa and the wider Southern African region (DISA 2013).

### 8.1.3. Perceptions of the organisation as a socio-cultural agent for change

An interesting theme which emerged in the literature was the self-realisation of some heritage institutions of being socio-cultural agents for change (Nakata 2002; Wareham 2001). Interestingly, DISA would like to position itself in that role. On its Web page, one of its policy documents reads in part (DISA 2013): 'content decisions are ... affected by ownership and IPR issues, *with care and effort expended in obtaining permission to use [indigenous] material* for the DISA archive' [researcher's emphasis].

This suggests that cultural heritage institutions in South Africa are aware of their own influence on the historic development of colonial and indigenous relationships. The idea of DISA viewing itself as a socio-cultural agent for change is significant

especially in light of IPRs of indigenous people, where its policy can be seen to bridge the legislative gap in the global use of the digitised knowledge.

#### 8.1.4. Perceptions about use of digitised IK

While the perceptions of use that emerged in the study were varied, a recurring theme in DISA's policies was that of viewing certain images as having 'special significance' for indigenous communities. This was reflected by the protocol advice for the users of the indigenous material in question to treat such objects with respect (DISA 2013). The term 'respect' was also prevalent in the data collected from the expert panel and can be seen as setting the tone for the appropriate use of digitised material.

In some cases, however, there was no mention about the sensitive use of items. This inconsistency in policy protocols was baffling. The expert panel urged DISA to properly guide users on this matter in order to avoid confusion.

## 8.2. Structural influences

Structural influences in the context of the current study entail the practical limitations regarding the format of displaying policy information on the Internet, including how the policy is accessed, framed and characterised (Sullivan 2002). This is captured in the second sub-question of the study: How accessible to the public are DISA's digitisation policies on the Internet?

### 8.2.1. Accessibility of policy

The accessibility of DISA policies on the Internet was explored during the course of data harvesting, for example whether the policy was available from DISA's home page, if it was negotiated by a number of mouse clicks, if it was hosted on a 'sister site' or if it had to be requested directly from the organisation. The description of restrictions placed through the actual design of the organisation's website was also investigated. Access to DISA's policies was relatively easy. The conditions of use read in part:

The rights of all copyright holders must be respected, and any restrictions on the use of the archive content established by DISA as a consequence of the wishes of copyright holders and/or the law, subject to 'fair use' principles allowing limited academic or educational uses, must be complied with. Failure to comply with the above is considered infringement of the intellectual property rights of identified copyright owners and may result in legal action against such person or persons, organisations or institutions. You may not modify any content or copyright or other notices contained in the archive (DISA 2013).

Visitors to the site then had to click on a link to show that they had accepted the conditions of use. Another statement in the policy on DISA's website was particularly interesting:

DISA has physical, electronic and management measures in place to prevent unauthorized access to user information, but cannot be responsible for information collected from websites linking from or to DISA. Please read the privacy policies of these other sites before providing them with personal information (DISA 2013).

The suggestion that DISA had no ultimate policy control over the security of material which it had sub-contracted to its own surrogates was significant. This could be an interesting avenue for further research.

### 8.3. Legislative influences

This next theme relates to the third sub-question of the study: What protection exists for the cultural and IPRs of indigenous people in South Africa and is this reflected in institutional policy? The issue for protecting IK is multi-layered and complex, especially in relation to exploring the legislation at the national level (Sithole 2006). In investigating the different perceptions that emerged from the panel of experts regarding legislation, it was important to relate the findings to the existing legislative provisions in South Africa.

The panellists in the study agreed that IK in South Africa is insufficiently protected from misappropriation (Department of Arts, Culture, Science and Technology 2001; Sithole 2006; Sunder 2006). This is because existing IPRs legislation is unable to accommodate complex indigenous ownership of knowledge, which is often cross-generational and communal (Sithole 2006). The Copyright Act in South Africa only addresses copyright in terms of the individual rights and as such does not recognise communal indigenous ownership (Van der Merwe 2009).

Thus, while DISA policies clearly stated that its copyright and policy information was interpreted in accordance with the laws of the land (DISA 2013), no reference to the legislative challenges highlighted above was noted by the researchers. Moreover, the researchers did not encounter any policy recognising indigenous people as primary guardians of their intellectual property. This may be seen as failure on the part of the organisation to clearly articulate its policy position but future research can explore this matter more exhaustively.

#### 8.3.1. Indigenous IPRs

The theme that indigenous IPRs are insufficiently protected in the South African legislation was echoed by the experts as noted above. Much of the indigenous material in cultural heritage institutions in South Africa, with the exception of material which is currently in the public domain, remains subject to relevant copyright laws. In many

cases, the institution is the owner of copyright, in others copyright is owned by the individuals or entities which created the particular work or material (Andrzejewski 2010; Van der Merwe 2009). However, the cultural and intellectual ownership rights of indigenous people in South Africa are not enshrined in legislation, whereas copyright is well covered.

At the time of the study, DISA's policies recognised this lack of legal underpinning for indigenous cultural and intellectual rights but also seemed to acknowledge the importance of these rights for indigenous communities in the country. This could be interpreted to mean that cultural heritage organisations in South Africa are willing to play the role of intermediaries between the law and indigenous interests which are not enshrined in the existing legislation. In this way, cultural heritage organisations such as DISA can bridge the gap between the Western oriented development of legislation and indigenous IPRs.

## 9. SUMMARY AND RECOMMENDATION

The study set out to investigate the current climate of policy and protocol development in South Africa's cultural heritage institutions. Using DISA as a case study, the study has discussed findings about intellectual property law, socio-cultural influences within indigenous communities and the degree to which the organisational culture of the heritage institution plays a role in the creation of policy and protocol information.

The many complex issues that relate to integrating an institution which is embedded in Western ideology, law and history with one of social inclusion and collaboration with indigenous communities appears to be one which cultural heritage institutions in South Africa seem open to. The study surveyed the 'virtual face' of the case under review which was important, as increasingly with the Web, researchers can experience digitised collections without necessarily visiting or touching the physical artefact.

It is recommended that heritage institutions in South Africa should ensure that their policy and protocol information is easily located and that they sanction their websites to adhere appropriately to both organisational and national policy. The study urges these institutions to recognise their influence as socio-cultural agents and actively submit recommendations for statutory development when an opportunity arises. It is also recommended that heritage institutions in the country continue building consultation networks with various indigenous stakeholders. The changes over the past ten years and rapid increase in research and literature on this subject indicate not only the growing indigenous literary movement, but also recognition from non-indigenous scholars and professionals in this area that this is an important issue.

The main themes that emerged from the study are that of cultural, legislative and structural influences. They, ultimately, inform the fundamental characteristics of the

policies and protocols of cultural heritage organisations in South Africa. Thus, the study concludes that cultural heritage institutions in the country seem ready to play an active role of being intermediaries between the law and indigenous concerns which are not recognised in the current legislation. Future research could include cross-national studies and investigation of policy in the digitisation of IK by indigenous people themselves on the continent of Africa.

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