Coll. Antropol. **28** Suppl. 1 (2004) 257–262
UDC 81'27(73)
Review

Language Revitalization in Native North America – Issues of Intellectual Property Rights and Intellectual Sovereignty

Sheri Tatsch

Native American Language Center, University of California, Davis, USA

A B S T R A C T

Language revitalization, oral tradition and epistemology are expressions of Native peoples intellectual sovereignty, and thus the foundation for indigenous intellectual property rights. As the people of California move towards language and cultural revitalization the question arises: What constitutes or constructs the definitions of intellectual property and how can appropriation of indigenous knowledge be protected? Looking at the issues faced by the California's indigenous populace and by implication, other indigenous peoples in the United States, this essay examines how protection may be afforded under the United Nations definition of 'heritage'. Given that the holding safe of a 'culture' or 'heritage' is inclusive of language, and thus has been determined to be a human right.

Key words: *language revitalization, Native Americans, property rights, intellectual sovereignty*

Introduction

The really crucial role of the United Nations is to promote and protect the human rights of indigenous people[1].

This declaration made by Boutros-Boutros Ghali, Secretary General of the United Nations in 1992 has had insignificant effect on the lives of California's indigenous population. Little has changed in the area of intellectual property rights in the past decade for the Indigenous peoples of California.

Intellectual Sovereignty

What is it that I speak of when I use the term intellectual sovereignty? One of

Received for publication December 15, 2003

the greatest influences for me as I approach this work are the words of Warrior:

We too must struggle for sovereignty, intellectual sovereignty, and allow the definition and articulation of what that means to emerge as we critically reflect on that struggle[2].

I see Intellectual sovereignty as the right to create, interpret, evaluate, and conceive, without the willful assault of Euro-American languages, values, and social norms. Thus, having conclusive power over our own minds. The struggle for intellectual sovereignty is also the struggle to maintain or to regain our heritage. Hidden from our view, kept sacred, held in silence is the knowledge contained within the indigenous languages of the peoples of California.

When a language becomes lost, cultural traditions or cultural knowledge becomes hidden from view also; removing from indigenous peoples the intellectual sovereignty held by their ancestors. Language revitalization allows for the reincorporating of traditional intellectual sovereignty. The revitalization of language is often thought of only as a means to communicate, merely a remnant of the past for those who work towards the renewal of ancestral language use in their communities. Language revitalization is much more. It completes or keeps whole the integrated wisdoms by connecting the fibers of religious, educational, economic, and socio-political structures. As this renewal occurs for many indigenous peoples within the state of California so arises the issue of intellectual property rights. As traditions move from the oral to technology based systems of documentation, the knowledge contained within these traditions becomes accessible by a much broader audience. This is best exampled by the J.P. Harrington Project underway at the University of California, Davis. Its principle investigators are Martha Macri and Victor Golla. Harrington's ethnographic and linguistic field notes dating from the early 1900's through the 1950's are being made accessible via the Native American Language Center's website. With this project every caution has been taken to ensure the protection of sensitive personal or cultural knowledge. The dedication of the Harrington Project to make accessible the information of Harrington's work back to the peoples from which it was obtained is admirable. The project is committed to compliance with individual indigenous communities' customary laws and the appropriate application of those regulations to the material now available on line. With language renewal occurring on multiple fronts this is not common practice. The audience is often outside the culture and as our history tells us, exploitation of our indigenous resources, both tangle and intangible, are too common an occurrence. And I worry, and wonder, what the manifestation will be as the interloper encroaches upon the intellectual landscape.

Language, the oral traditions and their socially constructed meanings within a society, form a basis for intellectual sovereignty. Warrior continues in his 1994 text,

We first see the struggle for sovereignty is not a struggle to be free from the influence of anything outside ourselves, but a process of asserting the power we possess as communities and individuals to make decisions that affect our lives[2].

Retention, maintenance, and revitalization of our traditional languages and the knowledge contained therein, are the keys to our intellectual sovereignty and are legitimate concerns for indigenous nations-concerns because it is our language and the social structures created by the use of language, that informs not only our history, but that informs us as individuals, as a society, and as a sovereign people

of who we are. Language situates us within the larger social and political structure of the United States and the state of California.

Intellectual Property

What constitutes the defining points of intellectual property in the U.S. and thereby California? Using the United States Federal statutes as parameters involving the licensing of intellectual property offers us a foundation for looking at the issues that are faced by Indigenous peoples in an attempt to protect the intellectual sovereignty that they possess.

The licensing of intellectual property involves primarily the granting of rights without the transference of ownership. Under United States statutes there are three classifications of licensing afforded during this process: 1) technology, 2) publishing and entertainment, and 3) trademark and merchandizing. The requirements for effective licensing are four-fold: 1) the party granting the license must have ownership, 2) one of the above three classifications must protect the intellectual property being licensed, 3) the rights being granted must be specified, and 4) specifications of rights that will not be granted must be detailed in the licensing process[3].

With a focus on indigenous languages, issues of copyright, falling under items 1 and 2 above are relevant. Licensing agreements that do not fall into these parameters succumb to forms that simply cannot be licensed under United States law. Under current practice the affective interest of more than one owner will not be protected, as well as any rights that may be precluded by any other statutes. The inability to possess communal ownership inherently denies Indigenous peoples who hold knowledge collectively, any protection under current licensing laws. This leaves a broad and slippery playing field for the protection of the intellectual property of California's indigenous population. Furthermore, licensing may not afford protection to any persons or institutions that may »impede progress through overprotection«[3].

Overprotection implies that the information that will benefit society as whole cannot be denied to those inhabitants. These laws are based in Euro-Western notions of individual rights and have never considered the values and systems of law of indigenous peoples. The primary purposes or effect of intellectual property laws within the U.S. are to promote individual effort to »conceive, create and exploit innovations«, and to encourage investment of risk capital, for without this, »innovation would languish« according to Dratler, never reaching its full potential in the marketplace[3].

As we begin to look at the parameters of these statutes, the dilemma of how they are applied to and interpreted by Indigenous peoples becomes apparent. The initial stumbling block is the foundation for intellectual property rights within U.S. territories. The question arises, why does anyone need the impetus of the investor to be creative, innovative, or aspire to hold knowledge? Additionally, the concept of exploitation for personal gain is counter to virtually all indigenous traditions.

The notion of risk capital puts further distance between the countering worldviews. Risk capital involves the possibility of monetary loss to the investor inherently due to uncontrollable factors in the marketplace that may affect the growth of a venture. Casting aside the Euro-American capitalist economy as a cultural agenda, this entire definition of risk capital with its correlates, capital gains and risk management, is void of meaning. This preposterous ideology insists that without the impetus of gaining monetary wealth humanity would never create, languishing forever in stupidity!

Primary to the stimulus of intellectual property laws is the establishment of the advancement of the Individual above all others. This concept of individualism is not foreign to Indigenous peoples, but is so socially and culturally abnormal as to be offensive. In some cases the intimation borders on the sacrilegious, moving against the conceptions of the sanctioned aspects of the culture(s). Independence of this character is detrimental to a society that functions communally, with the understanding and sentiment that Native peoples hold toward their lands, their kin, their community, and the totality of the relationship between themselves as individual, and their roles in the creation of the foundations of their society and culture. It is a space that remains not easily defined, and I submit must be experienced to be fully understood.

The chasm between Euro-Western legal notions of intellectual property rights and the indigenous views are too wide a gulf to mediate as they now stand. Until recently international interpretations of intellectual property rights held no advantage to the Indigenous nations and peoples of the United States. In light of United States' reinstatement into United Nations Educational Scientific and Cultural Organization (UNESCO) as of September 12, 2002, the execution of international law, and its applications to the intellectual property rights of the Indigenous peoples of California and U.S. held territories has the implications for transformation. With the reinstatement of the United States into the UNESCO body comes the obligation to uphold and promote its principles and all applicable »contemporary international law« which is defined as »international treaties or international customs which have acquired the force of law in the international community«[4]. In view of the Daes 1997 Report No. 10 we find under Item III; *International Legal Instruments and Mechanisms*, Section F; *Special instruments concerned with indigenous peoples,* Article 149 her report cites:

Article 4 of the International Labour Organization Convention on Indigenous and Tribal Peoples, [from] 1989 (No. 169), provides that special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned' in accordance with their own 'freely-expressed wishes'[5].

The focus here is on property (tangible) and culture (both tangible and intangible). In Daes's 1997 report to the United Nations on human rights she asserts, »'Heritage' is everything that belongs to a distinct people«[5]. The holding safe of 'culture' or 'heritage' has been determined to be a human right and is therefore afforded protection under international standards. Intellectual property as defined by these particulars may be afforded protection under the United Nations definition of 'heritage'. Item 24, Sec. 1 of the U.N. document on Human Rights No. 10 finds,

...heritage...includes all those things that international law regards as the creative production of human thought and craftsmanship, such as songs, stories, scientific knowledge and artworks.[5]

This definition encompasses language through song, stories and the expression of human thought he 1991 document proceeds to detail recommendations for the protection and use of communal rights, the acknowledgement of indigenous science and technology, with community control of research within the community and with its individual members. Additionally, Report 5 finds that »heritage« consists of,

All expressions of the relationship between the people, their land, and the other living beings…and is the basis for main-

taining social, economic, and diplomatic relationships...All aspects of heritage are interrelated…what tangible and intangible items constitute the heritage of a particular indigenous people must be determined by the people themselves[6].

The document strengthens the case for intellectual sovereignty and intellectual property rights by recognizing that due to the nomenclature of 'heritage' under United Nations statutes, indigenous peoples are »true collective owners«[5]. This defies the United States' interpretation of intellectual property seeing the sole proprietor as individual, whether they are *persona grata* or a corporate entity. Accordingly, under United Nations parameters the recognition of ownership as either collective or individual must be the held in the custody by the Indigenous peoples own laws and customs. In light of the *United States Public Law 101–477*, signed in 1990, finds the federal government and thereby the states responsible to protect, promote, and preserve Native American languages. As the responsibility to protect indigenous languages is held under United States statutes, so under international statutes the United States must protect the intangible; the intellectual property of indigenous peoples under United Nations law.

Conclusion

As Indigenous nations, tribes, and peoples work towards the revitalization of their languages, so must we seek protection of the knowledge contained therein. Numerous indigenous communities and their allies have made efforts to bridge the chasm between Indigenous customary law and Euro-Western standards of behavior and law in order to afford protection of Indigenous peoples and their resources, both the tangible and in the intangible. Current intellectual property laws in the United States are designed to ensure the successful continuance of a capitalist economy. Thus intellectual sovereignty is further diminished as Indigenous peoples are denied authority over their own economic survival. Economic sustainability is affected by the inability to shield knowledge from appropriation. Intellectual property and intellectual sovereignty constitute a whole, and can never be separated. I submit that the impact of U.S. and international corporate policies upon the intellectual sovereignty of a people is the foundation for the genocide of the mind. Indigenous is not determined by race as Euro-Western theorist would have us to believe. Indigenous is our heritage, held sacred within our languages, preserved in our oral traditions, guarded by our communities, and held safe in our hearts.

REFERENCES

1. EWEN, A., THE NATIVE AMERICAN COUNCIL OF NEW YORK CITY (Ed.): Voice of Indigenous Peoples: Native People Address the United Nations. (Clear Light Publishers, Santa Fe, 1994). — 2. WARRIOR, R.: Tribal Secrets: Recovering American Indian Intellectual Traditions. (University of Minnesota Press, Minneapolis, 1995). — 3. DRATLER, J.: Licensing of Intellectual Property. (Law Journal Seminars-Press, New York, 1994). — 4. DAES, E. A.: Status of the Individual and Contemporary International Law: Promotion, Protection and Restoration of Human Rights at National, Regional and International Levels. (United Nations, New York & Geneva, 1992). — 5. DAES, E. A: Protection of the Heritage of Indigenous People. (United Nations, New York & Geneva, 1997). — 6. DAES, E. A: Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities. (United Nations, New York & Geneva, 1991).

S. Tatsch

Native American Language Center, Department of Native American Studies, University of California, Davis, CA 95616, USA
e-mail: sjtatsch@ucdavis.edu

REVITALIZACIJA AUTOHTONIH JEZIKA U SJEVERNOJ AMERICI – PROBLEMI PRAVA NA INTELEKTUALNO VLASNIŠTVO I INTELEKTUALNU SUVERENOST

S A Ž E T A K

Revitalizacija jezika, usmena tradicija i epistemiologija izrazi su intelektualnog suvereniteta autohtonog stanovništva, a time i temelji njihovog prava na intelektualno vlasništvo. Kako se starosjedilačko stanovništvo Kalifornije sve više bavi jezičnom i kulturnom revitalizacijom postavlja se pitanje o konstituirajućim ili konstruktivnim elementima definicije intelektualnog vlasništva i mogućnosti zaštite tradicionalnog znanja od prisvajanja. Razmatrajući ove probleme s kojima se susreće autohtono stanovništvo Kalifornije, a samim time i drugi autohtoni stanovnici Sjedinjenih Država, u ovom se članku istražuje način na koji bi se oni mogli zaštititi u skladu s definicijom »baštine« Ujedinjenih naroda imajući u vidu da definicije »kulture«, odnosno »baštine«, u sebi sadržavaju i jezik te se njegova uporaba stoga mora smatrati ljudskim pravom.