

Acknowledgments

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Reception:

Jane Simons & the Flinders University Archaeological Society

Catering (lunches):

Susanne Montana Jones

(Morning and afternoon tea):
Price's Bakehouse Burra
Burra Bakery

(Conference dinner):
Stammy Overell, Burra Hotel

Transport:

Susan Hayfa & Toni Massey

Wine:

Stuart and Bronnie Walsh, Willy Hill winery
Sarah Bittner, Annie's Lane winery
Gus Stewart, Cellarbrations, Flagstaff Hill
Philip Manser

****Burra Hotel meal deal: Conference participants are eligible for a special \$10 meal deal at the Burra Hotel on Sunday and Tuesday nights, on production of their conference nametag.**

DAY PROGRAMME

	SUNDAY 3 rd December	MONDAY 4 th December	TUESDAY 5 th December
8.45	REGISTRATION	Key-Note Address Sven Ouzman <i>University of Pretoria</i>	Key-Note Address Daryle Rigney & Steve Hemming <i>Flinders University</i>
9.30	REGISTRATION GUIDED TOUR of HISTORIC BURRA (First tour leaves Town Hall at 10.00am & returns at 11.00am)	Managing Cultural Values and Biodiversity: Research, cultural knowledge and intellectual property on Ngarrindjeri Ruwe	One Law? Two Laws? Many Laws?
10.30-11.00		MORNING TEA <i>Exhibition Opening: Aboriginal Art from Arnhem Land</i>	MORNING TEA
11.00	REGISTRATION (closes at 12.00pm) GUIDED TOUR of HISTORIC BURRA (Second tour leaves 11.30 am & returns at 12.30pm)	Indigenous Peoples, Archaeologists and the Research Process	Publishing: Negotiating clashing world views
12.30	COMMUNITY BBQ LUNCH <i>Thomas Pickett Reserve, opposite the Town Hall</i>	LUNCH	LUNCH
1.45	<i>Ngadjuri Welcome Opening by Ngadjuri and Narrunga Descendents Dance group</i>	Indigenous People and Film: Getting your story out there	Closing Plenary
2.15	Key-Note Address Julie Hollowell, <i>University of British Columbia</i> , and George Nicholas, <i>Simon Fraser University</i>	Indigenous People and Film: Getting your story out there	Closing Plenary
3.00-3.30	AFTERNOON TEA	AFTERNOON TEA	AFTERNOON TEA
3.30	<i>Ngadjuri session: Bernie Warria and Ronald Berndt</i>	The Rights of Rock Art	GUIDED RED BANKS ROCK ART TOUR Or Self-guided Burra Passport tour
5.00			GUIDED RED BANKS ROCK ART TOUR Or Self-guided Burra Passport tour
6.00	RECEPTION <i>Burra Town Hall</i>	CONFERENCE DINNER <i>Burra Hotel</i>	

Indigenous Cultural Workshops will be ongoing throughout the conference

**Cultural Heritage and Indigenous Cultural and Intellectual
Property Rights
A World Archaeological Congress Symposium**

This cross-disciplinary international conference addresses the intersections between cultural heritage and cultural and intellectual property rights in Indigenous customary and academic worlds.

The economic, scientific, political and cultural uses and values of traditional and Indigenous knowledges are demanding mounting attention. Concerns about intangible heritage and cultural and intellectual property rights span diverse disciplines—from law, information technology, and art, to applied research ethics, bioprospecting and human rights, and especially in archaeology, as an academic discipline whose scholars are deeply enmeshed in both the policies and practices of cultural heritage.

Key issues:

- How are people employing concepts of cultural and intellectual property to lay claim(s) to the past, present and future?
- What examples do we have of successful uses and applications of the intellectual property system? Conversely, has this system hindered success, especially in cross-cultural contexts?
- What forms of legal and/or customary protection exist for intellectual property and cultural heritage? How do these apply to knowledge produced by academic research?
- In what areas do problems tend to arise? How might such problems be avoided?
- What are the key elements of successful, equitable resolutions of cultural and intellectual property rights issues, and what examples exist of how to translate these into workable policies and protocols?

Opening

The symposium will open at lunchtime on Sunday 3rd, December, with a performance by the Ngadjuri and Narrunga Descendents Dance group, as part of a celebration of their status as traditional owners of this country after many years of separation from their lands. This will be followed by a public barbeque in Thomas Pickett Reserve, sponsored by the Ngadjuri Heritage Committee and the Regional Council of Goyder.

Presentation Format

All presentations are in a panel discussion format, not a series of formal papers. Each presenter will have around 10 minutes to present their

main ideas, although this time will vary depending on the number of speakers and the length of the timeslot. The final part of each session will be devoted to discussion of the issues raised by the presentations.

Public Programme

All parts of this symposium are open to the public, and are free for all members of the Burra, Clare and surrounding communities. The public programme starts with a barbeque at Thomas Pickett Reserve, opposite the Town Hall, on Sunday 3rd, December, and includes cultural workshops by Indigenous artists, classes for schoolchildren and tours of Indigenous archaeological sites in the region. The public programme is sponsored by Ngadjuri peoples and the Regional Council of Goyder.

Art Exhibition and Auction

The programme includes an art exhibition by Aboriginal artists from Arnhem Land. All art in the exhibition is for sale, and one or more of the paintings produced by artists during the symposium will be auctioned at the conference dinner or Plenary session.

Culture Workshops & Schools Programme

The programme includes cultural workshops run by Indigenous participants on topics such as Indigenous dance, painting, basket making, and kinship systems. These workshops are part of a schools programme for children on art and culture, run by Indigenous participants of the symposium, and joint activities by Aboriginal children from Arnhem Land and the Burra region.

Tours

Guided tours of historic Burra will be held on the morning of Sunday, 3rd December. People wishing to join these tours should meet outside the Town Hall at 10.00am, or 11.30am. There will be a small charge (\$10 per person) for these tours.

Guided tours of Panaramittee style rock art sites at Red Banks Conservation Park will be led by Ngadjuri people on the afternoon of Tuesday, 5th December. There will be a small charge (\$10 per person) for these tours.

There will be a full-day tour of Aboriginal sites and the stunning outback landscapes of Braemar Station on Wednesday, 6th December. This tour costs \$80 per person and will include a picnic lunch at Braemar Homestead and travel to Adelaide via the Clare Valley.

Conference dinner (cost \$35.00)

The conference dinner will be held at the Burra Hotel from 6pm. There is a two course menu consisting of local specialities, such as saltbush

lamb, combined with a range of delicious side entrees and side dishes. Dessert is available for an additional cost of \$8.

Burra Hotel meal deal:

All conference participants are also eligible for a special \$10 meal deal at the Burra Hotel on Sunday and Tuesday nights, on production of their conference nametag.

About the town of Burra:

Founded in 1845, Burra became the site of one of the world's major copper mines until 1877. During the mining period Burra had 5,000 residents, a greater population than Brisbane and Perth combined. Separate villages developed according to the different homelands of the residents: the Cornish lived in Redruth, the Scots in Aberdeen, the Welsh in Llchwyr, and the English in Hampton, each village having separate shops and facilities. By the time the mine closed in 1877 the copper mining industry had saved the young colony of South Australia from financial disaster and Burra had become a transport centre for the north-east of the colony and parts of western NSW and southwest Qld.

The Cultural Heritage and Indigenous Cultural and Intellectual Property Rights symposium is held in the recently restored historic Burra Town Hall, built less than 20 years after the British colonisation of South Australia. The ICOMOS Burra Charter originated in Burra and in 1994, the township was declared a State Heritage Town in recognition of the integrity of the township as a whole and its historic buildings.

This symposium is hosted collaboratively by the Ngadjuri people of South Australia. It is a celebration of their returning to country, and a discussion of the cultural and intellectual property issues they face as part of this process.

Key-note Presentations

2.15pm, Sunday 3rd December

Intellectual Property Issues in Archaeology: Addressing the needs of a changing world through negotiated practice

George Nicholas, Simon Fraser University, Canada

Julie Hollowell, University of British Columbia, Canada

In recent decades, new interpretations of *cultural property rights* have prompted a paradigm shift in the policies and practices of archaeologists and cultural heritage practitioners, including, for example, the passage of such major legislation as the Native American Graves Protection and Repatriation Act in the United States. However, a topic of even greater challenge and scope in coming years is likely to be *intellectual property rights*, a topic that concerns both the process and products of archaeology, and which involves all stakeholders in the archaeological record. Researchers may well find themselves increasingly limited in the freedom to use scientific knowledge or indigenous sources of knowledge. At the same time, descendant communities (including non-Indigenous peoples) have legitimate concerns about the procurement, dissemination, and exploitation of their “traditional knowledge” and other products of their respective pasts (e.g. symbols, technology).

As commodification of cultural pasts and claims over uses of the past continue to expand, questions about sharing the benefits of research and concerns about unauthorized or commercial uses of knowledge, images, stories, and designs will persist and fuel debate, if not lawsuits. Significant changes have also occurred in the process of doing archaeology, as members of descendant communities become more directly involved in the study of their own cultural legacy. However, much of the knowledge produced by archaeology still contributes to a relatively select group, without benefits returning to source communities.

How archaeologists respond to these intellectual property challenges has the potential either to transform the discipline of archaeology and its relations with stakeholders in positive ways or constrain the quest for more equitable and productive relations.

This lecture will explore this set of issues by addressing three related topics. The first is to illustrate how intellectual property issues are emerging in such areas as (a) research designs, protocols and permissions, (b) concerns over research on human remains or potential applications of genetic data, (c) commodification or appropriation of archaeological imagery, oral histories, technologies and other forms of past knowledge, (d) dissemination of archaeological data and databases by museums, (e) archaeotourism, and (f) censorship or control over uses and interpretations of archaeological data.

The second topic focuses the need to recognize that archaeology (and related discipline) works best as a negotiated practice that recognizes the concerns of *all* stakeholders, and the fact that they often have different goals, values, and responsibilities regarding the practices and products of archaeological research. Here, the need for new processes of, and protocols for dealing with intellectual property issues will help to ensure a more equitable relationship between these stakeholders when it comes to intellectual and material property issues.

The last topic is to introduce the *Intellectual Property Issues in Cultural Heritage Project*, an international, multidisciplinary initiative designed to track intellectual property conflicts around the world, identify both points of conflict and examples of successful resolutions, and provide a foundation of knowledge, research, and tools to assist archaeologists, descendant communities, and other stakeholders in negotiating more equitable and successful resolutions and policies regarding intellectual property issues in archaeology.

8.45am, Monday 4th December

World Cultural Heritage? Object rights, human obligations and the conundrum of the commons

Sven Ouzman, University of Pretoria

Claims on human cultural heritage vary widely in scale and type. Most commonly, the language of heritage is one of permanent crisis, assuming a finite number of artefacts, sites and associated knowledge that are constantly under threat from development, time, vandalism, war and so forth. Foundational questions such as “why conserve?” are usually assumed rather than asked. Additionally, visually spectacular and 'complex' material manifestations of cultural heritage are cast as being the physical and intellectual property of “all humanity”—even if specific communities make exclusive claim on such heritage, and if specific entities such as museums own or control that heritage manifestation.

It is useful then to examine more closely the archaeology of heritage and its care within the 'Western' world in order to understand how this set of beliefs and practices meets or fails to meet with heritage prerogatives in the 'Indigenous' world. Part of this examination involves studying how people are defined by themselves and by others; by tracing the liberal underpinnings of “the commons” and our stewardship of it; and of the heritage 'industry' as an instrument of an extractive capitalist economy. The conversation between these 'Western' formulations of heritage, with those held by Indigenous communities who acknowledge the sentience of certain artefacts and sites and their right to live, decay and die, is crucial in order to find common ground, identify differences, and enable mutual reform. In this way, hard notions of 'ownership' can be softened via exploring options such as

leasing and time-sharing without escaping the ever-changing responsibilities of being a heritage custodian or getting caught up in conflictual legal language that stresses material 'property' rather than allegedly 'intangible' cultural knowledge.

8.45am, Tuesday 5th December

Ngarrindjeri Cultural and Intellectual Property: Re-negotiating Indigenous research in Universities and other sectors

Daryle Rigney and Steve Hemming, Flinders University

Since the Kumarangk (Hindmarsh Island) Royal Commission Ngarrindjeri leaders have been renegotiating research relationships with non-Indigenous institutions. The harsh lessons of this heritage 'event' have been shared by other Indigenous nations in Australia. During this period the role of Indigenous University centres in the research ethics process has also developed and shifted. We will reflect on these changes and their relationship to an expanding community-based research focus in Universities and within the government sector. In recent years the natural resource management (NRM) boom has brought with it new pressures on Indigenous people as researchers seek Indigenous perspectives, knowledges and approvals. The close relationship between NRM and cultural heritage management (CHM) is becoming a powerful site of renegotiation for Indigenous nation attempting to protect cultural knowledge but also to build Indigenous research agendas, resources and infrastructures.

Session rationales

Sunday 3rd December

3.30pm: Barney Warria and Ronald Berndt: Their relationship and shared intellectual property

Moderator: Claire Smith, Flinders University, Australia

Barney Warria and Ronald Berndt were good friends. They worked together for many years, recording the culture of Ngadjuri people. Their friendship started when Berndt was about 18 years old, and Barney was about 50. They liked and trusted each other. When Berndt died in May, 1990, he left a thirty year embargo on his field notes, including the notes he made of conversations with Barney Warria. Today, Barney Warria's Ngadjuri descendents wish to access this material in order to obtain knowledge about their forebears as part of the process of coming back to country. As it stands, however, because of the embargo they

are not able to access the material recorded by Berndt. This is not what Berndt envisaged when he established the embargo on his field notes, nor is it what he would have wished.

This situation raises serious issues concerning the ownership of the intellectual property that emerges as part of the research process. Did Berndt really have the right to place an embargo on Barney Warria's words? Since some of the text was inter-linear, many of the words were Barney Warria's, recorded verbatim. Surely his descendents should have access to these words? In this panel we suggest that these sections of Berndt's field notes constitute intellectual property that was shared between the two men, and that Berndt did not have the right to place an embargo on this material—especially as it relates to Barney Warria's descendents. Various facets of this are explored in a panel discussion, the implications of which are global.

Panel participants:

Shaun Berg, Hunt and Hunt Lawyers

Vincent Copley, Ngadjuri Heritage Committee

Vincent Branson, Ngadjuri Heritage Committee

Gary Jackson, Barunga community anthropologist

John Stanton, Berndt Museum, University of Western Australia

Amy Roberts, ALRM

Monday 4th December

9.30am: Managing Cultural Values and Biodiversity: Research, cultural knowledge and intellectual property on Ngarrindjeri Ruwe

Convenor: Steve Hemming, Flinders University, Australia

The Ngarrindjeri Nation has been engaging with research and researchers since the nineteenth century. For most of this time non-Indigenous people have researched and written about Ngarrindjeri people for a largely non-Indigenous audience. Since the Kumarangk (Hindmarsh Island) Royal Commission, Ngarrindjeri people have been developing a research agenda that seeks to harness the power of research for Ngarrindejri interests. The Kungun Ngarrindjeri Yunnan (listen to what Ngarrindjeri people are saying) agreement has been the instrument at the base of this new approach. We will discuss a number

of research areas and research projects and the Ngarrindjeri approach to negotiating and conducting just, equitable and useful research.

Panel participants:

Diane Bell, University of Adelaide
Shaun Berg, Hunt and Hunt Lawyers
Daryle Rigney, Flinders University, Australia
Tom Trevorrow, Ngarrindjeri Nation
George Trevorrow, Ngarrindjeri Nation
Grant Rigney, Ngarrindjeri Nation
Matt Rigney, Ngarrindjeri Nation
Chris Wilson, Flinders University, Australia

11.00am: Indigenous Peoples, Archaeologists and the Research Process

Convenor: Susan Forbes, Te Papa Museum, New Zealand

Indigenous peoples have long been the focus of research conducted by archaeologists, anthropologists and ethnographers. The vast majority of these researchers have been non-Indigenous. Research produces knowledge that, under current intellectual property laws, is legally owned, controlled and disseminated by the researcher. Indigenous communities who share their cultural and intellectual property with researchers are not recognised as being the legal owners of their knowledge and hence, can exert no legal control over who can access or use that knowledge. This can be problematic when the knowledge is of a secret/sacred nature, where access would normally be restricted to properly initiated members of the community. The appropriation and misuse of cultural and intellectual property is a major issue for Indigenous peoples.

This focus of this session is the cultural and intellectual property issues that Indigenous peoples and archaeologists encounter in the course of research. It will discuss both problems faced and instances of where these issues were successfully resolved.

Panel participants:

Caroline Phillips, University of Auckland, New Zealand
Margaret Rika-Heke, Tainui-Waikato and Ngapuhi, New Zealand
H. Martin Wobst, Department of Anthropology, University of Massachusetts, Amherst, USA
Moir Simpson, Flinders University, South Australia

Lyn Leader-Elliott, Flinders University, South Australia
George Gumerman, Northern Arizona University
Elmer Satala, Hopi Cultural Preservation Office

1.45pm: Indigenous People and Film: Getting your story out there

Convenors: George Merryman, Sydney Film Festival

How do you get an idea from page to film? What cultural and intellectual property issues are likely to be encountered when making a film with Indigenous people? How do negotiate with Indigenous communities about making a film with them? Are there any particular pitfalls, or opportunities, if you are an Indigenous person yourself? The Australian Film Commission

The Australian Film Commission is trying to address such issues in its draft *A Guide to Filmmakers Working with Indigenous Content and Indigenous Communities*. These and other important cultural and intellectual property issues will be addressed by our high profile panel of film-makers.

Panel participants:

Curtis Levy (*Sons of Nammatjira, Mourning for Mangatopi, Lurugu*)

Bob Connolly (*First Contact, Joe Leahy's Mates, Rats in the Ranks*)

Tom E. Lewis (*Yellow Fella*)

Christine Olsen (*Rabbit Proof Fence*)

3.30pm: The Rights of Rock Art: using and abusing ancient 'images' in a modern world?

*Convenors: Sally K. May, Flinders University, Australia;
Sven Ouzman, University of Pretoria, South Africa*

Rock art is many things: artefact, sacred object, ancestral being, gateway to other worlds—and commodity. And not just a commodity exploited by advertisers, authors, film-makers, tourists and looters, but also by archaeologists and heritage workers. After all, we do make at least some of our remuneration through using imagery in articles, displays, or films. To complicate matters, some uses of rock art do a lot of good for their makers and their descendants, and sometimes use is negotiated with affected individuals and communities. Sometimes rock art is claimed and used by multiple communities. As originator communities are dealing with intellectual property rights relating to the representation and control of their own and their ancestors' rock art imagery and associated objects and places, there is a constant stream of

outside claims made on their rock art. Must communities use 'Western' legal systems to protect their art—as the Canadian Snuneymuxw First Nation did by trademarking ten of their most abused images because these are “considered the official marks of the Snuneymuxw First Nation, in the same way the Canadian flag is considered an official symbol of Canada”? Or can rock art bring 'Western' and 'Indigenous' forms of law and co-operation into conversation, enabling mutual reform? Central to such a conversation would be to downplay human agency and pay more attention to rock art as a living tradition that itself can reasonably expect certain rights and courtesies.

The Rights of Rock Art session reviews a series of failed and successful case studies relating to the use and abuse of rock art and provides a forum for sharing ways to prevent or reduce abuse and to promote negotiated use while respecting originator community wishes to have no outside use of certain images and places.

Panel participants:

Alan Burns, South-west and Wimera Cultural Heritage Program

Gerard O'Regan, Ngai Tahu Tribe, New Zealand

Sven Ouzman, University of Pretoria, South Africa

Esme Webb, Edith Cowan University, Western Australia

A.M. Rossi, Edith Cowan University, Western Australia

Claire Smith, Flinders University, South Australia

Annie Ross, University of Queensland, Queensland, Australia

Tuesday 5th December

9.30am: One Law? Two Laws? Many Laws?

Convenors: Donald Craib, Craib Law Office, PLC, USA and Cheryl Simpson, Flinders University, Australia

Prior to colonisation by Western powers, Indigenous customary law controlled and protected knowledge within Indigenous society. Colonisation introduced a new set of laws that often conflicted with, and undermined, Indigenous law systems. This complexity is compounded when considered in relation to developments in international law. As it stands, Western intellectual property legislation has provided very limited protection for Indigenous cultural and intellectual knowledge. There is much debate over what would provide the best protection of Indigenous cultural and intellectual property, both tangible and intangible. While some advocate amending current intellectual property

laws to include Indigenous concepts of knowledge, others question whether the very system that legitimises the appropriation of Indigenous cultural and intellectual property in the first place could ever be used to provide the necessary protection. The complexities of these issues are evident in treatment of cultural and intellectual property issues by public institutions and international organisations.

Moreover, many aspects of Indigenous cultural and intellectual property are of an intangible nature. These include oral histories, music, songs, dances and ceremonies. Others, such as sand paintings, are ephemeral in nature. Because of their intangible nature, these aspects of Indigenous cultural and intellectual property have limited protection under Western intellectual property laws. Western laws only protect material expressions of knowledge. This means that whoever first reduces intangible ICIP to a tangible form will be granted legal ownership of that knowledge. This includes photographs and recordings of songs and dances.

Within the framework of this debate, this session explores the intersections of customary, national and international protections of Indigenous cultural and intellectual property. It provides a critical overview of contemporary issues and seeks to highlight those cases that are addressing the current limitations of protection.

Panel participants:

Donald Craib, Craib Law Office, PLC, USA

Paul Martin, University of New England, Australia

Eric Kansa, Alexandria Archive Institute, USA

Malia Talakai, World Intellectual Property Organisation and Radboud University of Nijmegen, The Netherlands

David Guilfoyle, South Coast Regional Initiative Planning Team, Western Australia

Megan Mebberson, DAA, Australia

George Mukuka, University of South Africa

11.00am: Publishing: Negotiating Clashing World Views

Convenor: Mitch Allen, Left Coast Press and Mills College, Oakland, CA

It is a seemingly unfixable problem. While many work to retain the rights to intellectual property in the hands of Indigenous people, that sentiment is incompatible with the rigours of traditional commercial publishing—scholarly, textbook, or trade—where intellectual property rights are tightly held by the publisher. Western presses rarely are willing or able to make an accommodation that allows the control of

words, images, and ideas of Indigenous people to remain in their own hands if they are to become the publishers of these works. Yet, broad circulation, familiarity and acceptance of these important ideas in the broader international community—including within other indigenous communities—is often dependent on the kind of global distribution and publicity that these presses can provide. Is there a way out of this conundrum? Self-publishing? Working with a limited set of presses? Indigenously-owned publishers? Trading intellectual property rights for other advantages? This panel discussion seeks to examine this problem through the lenses of publishers, Indigenous writers, and others concerned with cultural property.

Panel participants:

George Nicholas, Simon Fraser University, Canada

Julie Hollowell, University of British Columbia, Canada

H. Martin Wobst, Department of Anthropology, University of Massachusetts, Amherst, USA

Sean Ulm, University of Queensland, Australia

Session Abstracts

Please note: Some sessions consist of panel discussions only and are without abstracts.

Monday 4th December

INDIGENOUS PEOPLES, ARCHAEOLOGISTS AND THE RESEARCH PROCESS

SESSION STRUCTURE:

Dangers and Safeguards: Maori Knowledge in Archaeological Research

Caroline Phillips, University of Auckland, New Zealand

At The Interface: Encounters between Maori Intellectual Property Guardians and Archaeological Researchers

Margaret Rika-Heke, Tainui-Waikato and Ngapuhi, New Zealand

Oral Histories - Or How Archaeology Inserts Itself into Indigenous Social Relations

H. Martin Wobst, Department of Anthropology, University of Massachusetts, Amherst, USA

Crossing the boundaries: Developing Indigenous models of museums and archives

Moira Simpson, Flinders University, South Australia

Interpreting Aboriginal Cultural Heritage as part of the Birdsville/Strzelecki experience

Lyn Leader-Elliott, Flinders University, South Australia

Archaeological Conversations with a Hopi Elder

George Gumerman, Northern Arizona University and Elmer Satala, Hopi Cultural Preservation Office

ABSTRACTS

Dangers and Safeguards: Maori Knowledge in Archaeological Research

Caroline Phillips, University of Auckland, New Zealand

Indigenous knowledge, that body of information held by Indigenous peoples, is a creative process; it is constantly being shaped and reshaped according to the situation. Consequently Indigenous peoples express or emphasise aspects of their knowledge depending on the particular context. Archaeological research also has its own structure, and the researcher will have their own questions and purpose. Often the process of archaeological research involves the drawing together of oral accounts, historical information, physical observations, material objects and archaeological models into an interpretation of the past.

Once this interpretation is made it is then disseminated through the academic media.

Issues arise in relation to the context in which the oral accounts, or written history were made; the purpose or relevance of the research; the form in which the interpretations are made; and finally the access, or restrictions, that are placed on the results.

I have been involved in two inter-disciplinary archaeological research projects involving Maori knowledge: one incorporating archival histories, and the second including both oral and written accounts. Using these examples, this paper examines those points of danger where control of the process (not just indigenous knowledge itself) is not in the hands of the Indigenous person or group, and discusses the safeguards that may be put in place to ensure that the knowledge is not misused or misconstrued

At The Interface: Encounters between Maori intellectual property guardians and archaeological researchers

Margaret Rika-Heke, Tainui-Waikato and Ngapuhi, New Zealand

In the modern era Indigenous culture has been commodified: transformed into a resource from which industries mine Indigenous epistemologies in the pursuit of marketability and, ultimately, socio-economic gain. Indigenous cultural intellectual property has become an increasingly contentious landscape, primarily because of the intersection of diverse business, technological, cultural and value paradigms. In terms of archaeological research generation and praxis, a certain amount of friction has arisen out of conceptual differences relating to what is considered acceptable and what is not. Often cited flashpoints allude to aspects of authorship, access, control, use rights, restriction and dissemination.

Indigenous peoples throughout the world are reacting against the marketing of their intangible heritage. In Aotearoa/New Zealand the best articulation of this reaction, is exemplified by the Wai 262 claim, in which Maori claimants maintain that the New Zealand Crown has breached their obligations under the Treaty of Waitangi to protect the ability of Maori to exercise their rights of control and guardianship over indigenous flora and fauna, other taonga, and traditional knowledge. This paper examines some of the primary cultural intellectual property issues that Maori and archaeologists encounter in the course of research, particularly where matauranga Maori (Maori knowledge systems), taonga (treasures) and wahi tapu (sacred precincts and places of memory) are concerned.

Oral Histories - Or How Archaeology Inserts Itself into Indigenous Social Relations

H. Martin Wobst, Department of Anthropology, University of Massachusetts, Amherst, USA

For good reason, Indigenous populations let archaeologists listen to and record their oral histories. For good reason, too, archaeologists have cheerfully done that. This kind of oral history collaboration looks like a win-win situation for Indigenous populations and archaeologists. Yet, what at first sight appears to be a rare instance of post-colonial synergy and cooperation among equals is full of re-colonizing potential for Indigenous societies. The potential for

damage is severe enough to require archaeologists to provide a community's cultural custodians with carefully reasoned statements about the potential for negative social impact, before being allowed to record and publish that community's oral histories. In addition, communities should retain the copyright over such externally published oral histories, and be encouraged to revise them, or withdraw them altogether, as their needs dictate.

Crossing the Boundaries: Developing Indigenous models of museums and archives

Moira Simpson, Flinders University, South Australia

In many indigenous societies, community-based approaches to preserving, managing and transmitting tangible and intangible heritage, are being combined with adaptations of conventional museum practices to create new forms of ethnomuseology that utilise culturally different and diverse, but essentially complementary, mechanisms for heritage preservation and interpretation. The operation of culturally-appropriate museums, can contribute to the revitalisation of cultural traditions and strengthening of social unity within the community. However, spiritual heritage, in particular, often requires great sensitivity, care and control in terms of the curation, conservation and protection of sacred and ceremonial objects and associated cultural knowledge and practices. To achieve this, especially in spaces in which inter-cultural exchanges occur, many culturally-appropriate museums and cultural facilities operate within boundaries of varying degrees of permeability designed to sustain efforts to preserve and renew traditional cultural values and practices and also protect and control access to Indigenous cultural and intellectual property which is sensitive or subject to restrictions.

In this paper, I will consider the ways in which Indigenous approaches to the management and preservation of cultural and intellectual property are being used in parallel with Western museology as part of strategies designed to preserve, revitalise and protect culture, leading to the development of museums and related cultural facilities that operate within Indigenous knowledge systems and social frameworks. While these local models of museums may challenge some conventional notions of museums and their roles, they demonstrate the importance of non-western epistemologies in the creation of cultural facilities that suit local community needs, agendas and cultural protocols.

Interpreting Aboriginal Cultural Heritage as part of the Birdsville/Strzelecki experience

Lyn Leader-Elliott, Flinders University, South Australia

This paper examines some issues relating to inclusion of Aboriginal cultural heritage in a study commissioned by State and Federal government on cultural heritage and heritage tourism potential along the Birdsville and Strzelecki Tracks in South Australia and Queensland. Tourism surveys show low levels of perception of 'Aboriginality' linked to the Outback, possibly connected to the poor representation of Aboriginal cultural association with the study region in tourist literature as well as on the ground. Legislative and administrative considerations led to the omission of Aboriginal heritage from the heritage tourism study, which was required to concentrate on post-settlement historic heritage. The report recommended that the Aboriginal

story be told where appropriate, and that this be based on consultation with Aboriginal communities to identify places suitable for interpretation, so that a layered understanding of people and place can be developed.

Significant constraints on including Indigenous cultural heritage in the study framework were imposed by time frames and separation of government functions for historic and Indigenous cultural heritage, as well as by the time constraints of the survey project. In this project, and in others such as the Yurrebilla Trail, Indigenous heritage is under-represented in interpretation and presentation of Australian cultural landscapes.

Archaeological Conversations with a Hopi Elder

George Gumerman, Northern Arizona University and

Elmer Satala, Hopi Cultural Preservation Office

How does the Hopi Tribe work with Western archaeologists? What does it take to form a collaborative project that involves archaeology and the Hopi Tribe? The Hopi have specific research protocols and a permitting process that places ownership among the Hopi rather than the archaeologist. Any research that involves Hopi must demonstrate a clear benefit to the Hopi people. We discuss the mutually beneficial Hopi Footprints project to illustrate how archaeology and elder knowledge are used to create culture curricula for Hopi schools while also enriching archaeological scholarship and knowledge. The result is a collaborative partnership where both Hopi and archaeologists benefit much more than would be the case if each worked independently.

THE RIGHTS OF ROCK ART: USING AND ABUSING ANCIENT 'IMAGES' IN A MODERN WORLD?

SESSION STRUCTURE:

Rock Art or Rock Graffiti? An Aboriginal view on graffiti removal in country for which you are not the traditional owner

Alan Burns, South-west and Wimerera Cultural Heritage Program

Appropriation and Reclamation in the Reuse of Southern Maori Rock Art

Gerard O'Regan, Ngai Tahu Tribe, New Zealand

Rock Art for the Rainbow Nation? Forging new identities in post-Apartheid southern Africa

Sven Ouzman, University of Pretoria, South Africa

To See or Not to See? The deleterious effects of permitting tourism at an Aboriginal site in a fragile environment

Esmee Webb, Edith Cowan University, Western Australia

A.M. Rossi, Edith Cowan University, Western Australia

The Appropriation of Indigenous Images. A review of Ian Wilson's *Lost World of the Kimberley*

Claire Smith, Flinders University, South Australia

Whose Site, Whose Interpretation? Understanding and managing the Gummingurru Aboriginal stone arrangement site, Darling Downs, Queensland, Australia

Annie Ross, University of Queensland, Queensland, Australia

ABSTRACTS

Rock Art or Rock Graffiti? An Aboriginal view on graffiti removal in country for which you are not a traditional custodian

Alan Burns, South-West and Wimera Cultural Heritage Program

This paper discusses Indigenous cultural and intellectual property issues in terms of rock art graffiti at Mount Arapilies, Victoria. As in other parts of Australia, the selective removal of graffiti is an integral component of cultural heritage management in this area. But one person's art can be another person's graffiti. How do you define graffiti? How do you determine what should stay and what should go? If we accept rock art as a living tradition, it follows that some rock art graffiti may be an extension of that tradition. In Australia, additions by pioneer Australians and subsequent settlers complicate the situation. These issues are discussed from the viewpoint of an Aboriginal cultural heritage officer, whose work lies in country for which he is not a traditional custodian.

Appropriation and Reclamation in the Reuse of Southern Maori Rock Art

Gerard O'Regan, Ngai Tahu Tribe, New Zealand

Some traditional Maori art forms such as meeting house carving survived Western colonisation. Others have gone through more recent renaissances, such as the *tamoko* (tattooing) that has spread to pop culture well beyond New Zealand's shores. The creation of carvings and paintings in the landscape did not survive as a living tradition among South Island Maori and, to date, the rock art remains standing as treasures of old. Yet the motifs have jumped beyond the sites into a host of re-uses both within and beyond Maori society. This presentation will track the re-use of selected Ngai Tahu rock art motifs, probing the increasingly indistinct boundary between 'misappropriation' of motifs by others and 're-appropriation' by the tribe. It will explore a blurring of intellectual and cultural property issues that increasingly forces tribal notions of culturally appropriate re-use from 'what is being done' to 'who is doing it'.

Rock Art for the Rainbow Nation? Forging new identities in post-Apartheid southern Africa

Sven Ouzman, University of Pretoria, South Africa

Archaeology is best understood as a powerful, if partial, set of observation techniques that focus on artefacts, sites, landscapes, ethnographies and so forth. But Archaeology's failure to engage with especially Indigenous communities may be in large part due to the insistence on using words to describe 'things', like rock art. More complexly, these 'things' or 'artefacts' are not lifeless pieces of 'evidence' – they have life histories and are integral to human identity. This understanding may bring archaeological interpretations closer to many Indigenous notions of certain objects, landscapes and so on being alive and in conversation with humans. Southern Africa provides a rich archaeology that plays an active role in everyday life. For example, the 'Cradle of Humankind' hominid sites at Sterkfontein connect with a shared human

desire to understand their points of origin and subsequent trajectories from those points. Rock art is especially visible and appears at the centre of South Africa's coat of arms as well as being used and abused in the heritage industry. Indigenous communities like the San have taken steps like establishing a media and research contract to prevent academic and commercial exploitation of certain aspects of their history and modern life. Pushed a little further, this initiative may make people understand that what we call 'objects' also have rights and expectations and they form a partnership with people in creating a less anthropocentric world.

To See or Not to See? The deleterious effects of permitting tourism at an Aboriginal site in a fragile environment

Esmee Webb, Edith Cowan University, Western Australia

A.M. Rossi, Edith Cowan University, Western Australia

Mulka's Cave, near Hyden, is a comparatively 'ordinary' Aboriginal rock art site on the eastern edge of the Wheatbelt in southwestern Australia. Due to its proximity to Wave Rock, a heavily-promoted natural granite weathering feature, Mulka's Cave is visited by about 80,000 tourists a year. Analysis of old photographs and survey data shows that about one metre of the archaeological deposits within the cave has disappeared in the last 50 years, prompting us to question whether large numbers of tourists should be allowed unfettered access to Aboriginal sites in fragile environments. This study developed out of management work recently undertaken at the cave with the whole-hearted support of the Aboriginal people with links to the surrounding country, to reduce tourist impact and, it is hoped, arrest degradation of the site.

The Appropriation of Indigenous Images. A review of Ian Wilson's *Lost World of the Kimberley*

Claire Smith, Flinders University, South Australia

Ian Wilson's *Lost World Of The Kimberley: Extraordinary Glimpses Of Australia's Ice Age Ancestors* is an example of how Indigenous images are appropriated in search of a 'good story' with little consideration of that story's impact on the Indigenous community. Wilson revives the notion that Australia may have been inhabited by a pre-Aboriginal 'mystery race'. He interprets the Gwion Gwion figures, an ancient Kimberley rock art tradition, as material evidence of this mystery race. Wilson's book provides no independent evidence, other than his own interpretations of the paintings, to support the notion of a mystery race. Wilson's work also raises a number of other ethical problems regarding the use of Indigenous images. This presentation discusses these problems in the light of wider trends in Australian society and in scholarly publishing. So, who is to blame for this book? While Wilson wrote the words, he operates in a world of inter-connections and relationships. I argue that previous researchers in the Kimberley should carry some of this responsibility. In particular, the influence of Graham Walsh, including his (1994) book *Bradshaws: Ancient rock paintings of north-west Australia*, is evident. Furthermore, the publisher has to accept some culpability. I discuss how the book has been presented not only to attract an audience but also to attribute authority to the author. Finally, I suggest that we all share a responsibility to address the inaccuracies contained in publications such as this, especially when they are likely to (mis)inform public perceptions of Australia's past.

Whose Site, Whose Interpretation? Understanding and managing the Gummingurru Aboriginal stone arrangement site, Darling Downs, Queensland, Australia

Anne Ross, University of Queensland, Queensland, Australia

Aboriginal stone arrangements occur throughout Australia and are generally known to be of ritual importance to Aboriginal peoples. In the late 19th century Gummingurru, a large stone

arrangement on the Darling Downs, southeastern Queensland, was part of a highly significant men's initiation site on one of the main routes between the coast and the Bunya Mountains but by the early 20th century most of the traditional custodians of the site had been removed to Cherbourg. In the last five years, traditional custodians have returned to the site and have given the place and its cultural landscape a new meaning. As part of their re-interpretation of the site, traditional custodians are finding new patterns in the stone arrangements. In this paper I examine the archaeological and cultural heritage implications of this re-formation of the past and argue that intellectual property issues are central to understanding and accepting such interpretations of the past.

Tuesday 5th December

ONE LAW? TWO LAWS? MANY LAWS?

SESSION STRUCTURE:

U.S. Intellectual Property Law and Native American Imagery: Can Federal trademark law be used to cancel existing trademarks that Native Americans find offensive?

Donald Craib, Craib Law Office, PLC, USA

Knowledge Trusts: A more efficient path for knowledge protection?

Paul Martin, University of New England, Australia

Indigenous Heritage and the Digital Commons

Eric Kansa, Alexandria Archive Institute, USA

Intellectual and Cultural Property in the Domains, Public and Cultural Institutions: Alternative measures to safe guarding cultural heritage in the Pacific

Malia Talakai, World Intellectual Property Organisation and Radboud University of Nijmegen, The Netherlands

Restoring Connections

David Guilfoyle, South Coast Regional Initiative Planning Team, Western Australia

A Case Study: The Register of Aboriginal Owners Aboriginal Land Rights Act 1983

Megan Mebberson, DAA, Australia

Indigenous Knowledge Systems and Intellectual Property Laws in South Africa: The hoodia cactus and the Africa potato

George Mukuka, University of South Africa

ABSTRACTS

U.S. Intellectual Property Law and Native American Imagery: Can federal trademark law be used to cancel existing trademarks that Native Americans find offensive?

Donald Craib, Craib Law Office, PLC, USA

The Chicago Blackhawks; the Atlanta Braves' tomahawk chop; the Washington Redskins; the University of Illinois's mascot, Chief Illiniwek; and the Cleveland Indians, to mention just a few. Are these names and imagery offensive? Native American mascots, names, logos, symbols, and imagery used by American sports teams have launched a firestorm of controversy over the past thirty years. Do these mascots honour Native Americans, as many sports fans would suggest, or do they exploit and disparage a forgotten community that has seen suffering from discrimination and rejection for the past four hundred years? Native Americans have now turned to the American legal system to fight to change American sports team names, mascots, and imagery containing references to Native American culture. This paper discusses the issue of whether U.S. intellectual property law, specifically federal trademark law, can be used to cancel a registered mark because it is offensive, disparaging, and scandalous. In *Harjo v. Pro-Football*, Native Americans sought to have the registered trademarks owned by the Washington Redskins football team cancelled on the ground that the marks were offensive and thus violated federal trademark law. In 1999, the Trademark Trial and Appeal Board (TTAB) of the U.S. Patent and Trademark Office ruled in favour of the Native Americans and ordered cancellation of the offensive marks. A subsequent reversal of this ruling by a federal district court and a succeeding reversal of the district court's decision by a federal appellate court have guaranteed that the issue will remain in litigation for the foreseeable future.

Knowledge Trusts: A more efficient path for knowledge protection?

Paul Martin, University of New England, Australia

In commerce, particularly high technology industry, knowledge is protected through a combination of contract and trust, which are proven, low cost and flexible mechanisms. Yet in protecting cultural property we seek to create cumbersome, legally strange and costly strategies. Perhaps it is time to learn from the 'big end of town' about how to protect the interests of the less advantaged. This paper outlines just such a strategy and instrument and invites collaboration on its development.

Indigenous Heritage and the Digital Commons

Eric Kansa, Alexandria Archive Institute, USA

The 21st century has ushered in new debates and social movements that aim to structure how knowledge is produced, owned, and distributed. On one side, 'access to knowledge' advocates seek greater freedom for finding, distributing, using, and reusing information. On the other hand, traditional knowledge rights advocates seek to protect certain forms of knowledge from appropriation and exploitation and seek recognition for communal and locally situated notions of heritage and intellectual property. Understanding and bridging the tension between these movements represents a vital and significant challenge. This paper introduces a project led by iCommons (icommons.org) in partnership with the Alexandria Archive Institute (www.alexandriaarchive.org) to explore where these seemingly divergent goals may converge.

The 'Commons' is envisioned as a context to re-imagine communication, culture, knowledge sharing, science, and the public sphere and how they relate

to new, empowering technologies and social relations. Inherent in this re-imagination is the recognition that privacy, propriety, and spirituality all vary widely across cultural systems. A key concept that may help bridge these movements centres on the Creative Commons concept of 'some rights reserved', a model underlying their globally popular copyright licenses. The 'some rights reserved' model is an attempt to navigate a course between polarized states of 'all-or-nothing' protections found in current international intellectual-property frameworks. It can help formulate strategies that encourage reciprocity, participation, and meaningful consultation between members of different communities. Participation and leadership of indigenous community organizations can help extend this model to better meet the needs of these communities.

Intellectual and Cultural Property in the Domains, Public and Cultural Institutions: Alternative measures to safe guarding cultural heritage in the Pacific

Malia Talakai, Radboud University of Nijmegen, The Netherlands

The domains: public and cultural institutions, house vast amounts of both tangible and intangible heritage. Some can be protected by intellectual property legislation but some cannot be because of the limitations of the current regimes of intellectual property. The limitation of the current intellectual property laws to protect traditional knowledge and traditional cultural expressions or expressions of folklore, have become the focus of concerns and complains from indigenous peoples and communities. Particular concerns have been given to cultural heritage that are in the domains public and in cultural institutions such as museums, archive, libraries and so forth.

In 2005-2006, The World Intellectual Property Organisation (WIPO) commissioned a Research Project which I was part of. The WIPO project looked at how cultural institutions deal with intellectual property issues that arise in their day-to-day practices and how they deal with these issues. Therefore, this paper will draw of the WIPO Project findings and it will discuss the domains: public and cultural institutions, as both spaces which house cultural heritage, their differences and how their day to day practices can offer alternative measures for the safeguarding of cultural heritage.

Restoring Connections

David Guilfoyle, South Coast Regional Initiative Planning Team, Western Australia

The role of the Restoring Connections Project is to work alongside Noongar groups in both the South West and South Coast Regions and implement management plans that integrate cultural heritage places and values into Natural Resource Management (NRM). Noongar people have a strong desire for their role in caring for country to be recognized and supported through the regional NRM processes. Noongar lands extend across south-western Australia and encompass areas recognized as high priority for biodiversity, water, marine and other values. The Noongar country is where biodiversity loss and land degradation are at their worst in Western Australia. Using several case studies, this paper outlines how this project was implemented, integrating current work with Indigenous approaches, leading to direct on-ground works to protect

and/or restore degraded segments of Noongar cultural landscapes. The notion, and the action, to restore segments of cultural landscapes was one principle mechanism to ensure the protection of Indigenous cultural and intellectual property rights. The work has informed on clear pathways forward in heritage management, aimed at the protection of places, values, and rights; including tangible methodologies for moving beyond site-specific assessments and toward more culturally-appropriate, landscape-level approaches that are central to NRM.

A Case Study: The Register of Aboriginal Owners, Aboriginal Land Rights Act 1983

Megan Mebberson, DAA, Australia

This paper briefly outlines the process involved in registering Aboriginal owners and the sensitivity surrounding obtaining cultural knowledge. The identification of Aboriginal owners is an essential step towards the joint management of lands in New South Wales. The Register of Aboriginal Owners is established and maintained in accordance with the Aboriginal Land Rights Act 1983 (ALRA).

The Registrar, ALRA undertakes extensive research to assist Aboriginal people in their applications including gathering personal family information and cultural knowledge. This information is collected under strict guidelines. The consideration of intellectual and cultural property rights is paramount to this process. Consequently, the Registrar has mechanisms in place to protect such information which is used and reproduced exclusively by Office of the Registrar for the purpose of entering an applicant on the Register of Aboriginal Owners.

Requests for access to this information pose poignant issues for the Registrar. The information being sought is, in essence, not available to the public in accordance with the procedure set up by the Registrar. This paper explores the methods used to safeguard Aboriginal people's intellectual property.

Indigenous Knowledge Systems and Intellectual Property Laws in South Africa: The hoodia cactus and the Africa potato

George Mukuka, University of South Africa

The aim of this paper is to outline the current status of indigenous intellectual property rights protection in South Africa. The paper begins by looking at the definition of Indigenous Knowledge Systems and intellectual property laws. The paper suggest that in order for us to understand fully the developments of intellectual property in South Africa we need to look at such developments in the United States and Australia. The paper then examines two cases dealing with the hoodia cactus among the Khoisan community and the African potato used among the Zulu community in Natal and Gauteng. The methodology used in this paper is interviews and case studies which were largely influenced by theoretical perspectives which, among other things, highlight the fact that one of the consequences for indigenous knowledge systems of colonialism and apartheid was the fundamental erasure of indigenous cultures effected across the rich knowledge heritages of non-Western people.