

INDIGENISING INTELLECTUAL PROPERTY

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This article examines the ways in which traditional structures of governance and Indigenous systems of regulating and managing traditional knowledge and cultural property can be used to resolve or mediate disputes over intellectual and cultural property. It is based on the outcomes of two research projects which attempted to grapple with these issues. Both projects where ARC Collaborative with ATSIC. The Into the Millennium project addressed the Indigenous media industry and the Legal and Cultural Protocol Project addressed the Indigenous arts industry. By carrying out these projects in tandem a theoretical as well as people's participatory approach was achieved.

Practical knowledge — not just the theoretical perspective — is fundamental to understanding the issue of intellectual property and its bundle of rights and responsibilities. Furthermore, the power of definition is intrinsic to any notion of self-determination and therefore governance of their intellectual property by Indigenous peoples.

We prefer not have to go down the path of a native title claim and go through the courts to achieve this. That is a last resort. Some might call us naïve in having this approach. They say that using the full force of the law is the only way to go. Maybe it's Yolngu arrogance but what we want to happen is for the wider population to see the plain good sense of what we are saying. And to us it makes indisputable good sense that Yolngu — the people who are out there in Arnhem Land where this is happening — are at the heart of the matter.¹

This article incorporates the findings of the Into the Millennium project which investigated traditional governance systems to help to manage information technology and telecommunications as tools for sustaining Indigenous culture. In conjunction with this project, Morris also carried out part of the Legal and Cultural Protocol Project which focused on finding a

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¹ T Yumbulul and K Djiniyini (1997) 'My Island Home: A Marine Protection Strategy for Manbuynga ga Rulyapa (Arafura Sea)', in G Yunupingu (ed), *Our Land is Our Life Land Rights — Past, Present and Future*, University of Queensland Press, p 183.

management regime for Indigenous Arts Users. Both areas are rife with abuses of artists' copyright and intellectual property.²

This article therefore addresses the issue of intellectual property but does not let it stand alone. Rather, it situates it within the economic, communication and political structure of society. The Murray Island people of the Torres Strait have led the way in asserting their rights to 'define and name' what they perceive are the fundamental issues relating to intellectual property. As the leaders of the native title push, they are logically the most appropriate people to propose an intellectual property regime which might fit into the overall legal framework of the *Native Title Act 1993* (Cth)

They have empowered themselves to have at least a say, rather than being victims who rely on the Common Law to solve their problems. Furthermore, they are enacting principles which assert that *in situ* Indigenous management regimes are the best method by which to conserve and protect Indigenous knowledge.³ They are not looking for a foolproof solution, just as intellectual property/law cannot stop the abuses of the rights of mainstream artists. What they are doing is participating as 'full law' citizens in an attempt to solve an important issue. The principal of peoples participation in managing this all pervasive and on going problem was the aim of Morris's contribution to the Legal and Cultural Protocol Project headed by Professor Brad Sherman. The design of a set of protocols which were somehow to be applicable to the over 300 Indigenous clans of Australia was not her goal; rather, she was aiming to find a community which could be a model for others to investigate rather than emulate. The members of each Indigenous clan which encounters intellectual property issues must empower themselves with their own home-grown solutions and it is the role of the researcher to offer 'food for thought', not foolproof solutions. The following account of the outcomes of the *Into the Millennium* report therefore must be seen as being continuously enhanced by the theoretical outcomes of the Legal and Cultural Protocol Project. It was the latter project which gave Morris the opportunity to focus on the intersection between the two Laws which manage the resources of the Australian continent.

Into the Millennium Report

We argue in this report that the concept of intellectual property has been a defining characteristic of Indigenous culture from the beginning. It determines intellectual property rights and responsibilities, identity and each person's place in society in relation to the law. Indigenous intellectual property regimes (IPR) operate through sophisticated management systems which have survived for millennia. Murray Island Chairman Ron Day uses the example of how different concepts of culture must be understood to grasp the full meaning of

² C Morris and M Meadows (2001) 'Into the New Millennium — Indigenous Media in Australia', Report on Australian Research Council Collaborative project with NIMAA and ATSIC.

³ D Posey (1999) *Cultural and Spiritual Values of Biodiversity: A Complementary Contribution to the Global Biodiversity Assessment*, Intermediate Technology, p 13.

Indigenous IPR. He explains that Torres Strait Islanders see a cultural object — like a stone implement created by ancestors — as having a spiritual value. Anything that was made 2000 years ago has a spiritual dimension which continues to the present day. But others might look at the artefact and merely see a piece of rock. Ron Day continues:

Let me put it this way. When we address international or national forums with respect to culture, people usually give it out from the top of their minds I question that all the time. Anybody can talk about culture but not everyone practises it. So when you talk about culture you have to talk about it from your own being and not from a text book. So when you approach objects like that [the artefact], its power naturally becomes part of you ..⁴

This is an important starting point for thinking about Indigenous intellectual property rights. Culture is a dynamic, lived experience.

Products of the Mind

Intellectual property rights have been described as the ‘rights asserted in the products of the mind’.⁵ This means that such things as traditional knowledge and cultural products — like media — have a commercial value.⁶ But there is an international debate over how to manage IPR because of the increasing changes in technology and social demands. This means that traditional, moral and ethical issues can no longer be separated from how communication technology is managed, who owns innovative ideas and products, and business processes.⁷

Indigenous societies have an advantage here in that suitable laws governing cultural products — and objects — already exist. Indigenous cultural products ‘come out of a Law and are managed and protected by that Law’.⁸ The chairman of the Hammond Island Council uses the analogy of Torres Strait Islanders’ use of boats to explain how the law is practised:

The sea is our highway to the next island ... Out of common respect to owners of those boats you have to ask permission before you can use a boat. Otherwise you haven’t got self-respect in doing that. You think

⁴ TSIMA (1999a) *It’s Our Law and Culture So Let’s Protect It! IPR & Copyright in the Torres Strait*, videotape, Griffith University.

⁵ M Simons, ‘Aboriginal Heritage Art and Moral Rights’ (2000) 27 *Annals of Tourism Research* 2, pp 412–31.

⁶ E da Costa e Silva, ‘The Protection of Intellectual Property for Local and Indigenous Communities’ (1995) 17 *European Intellectual Property Review* 11, pp 546–49.

⁷ P Ganguli, ‘Intellectual Property Rights: Mothering Innovations to Markets’ (2000) 22 *World Patent Information* 1–2, p 44.

⁸ C Morris (1999) ‘Cultural Policy, Law and Communication: Indigenous Filmmakers and Their Perspectives’, Background Paper, Australian Key Centre for Cultural and Media Policy, Griffith University.

that you're above the law by just going and taking what you want to use without actually first talking with the owners. First of all you must have respect to yourself and learn to respect others. There was law before the white man came into our lives. Who is man to come and change our traditional laws to suit their own? I think that's not right, that's wrong, because we've survived in the past through our own traditional laws and customs that must be recognised and respected by the government of the day.⁹

Traditional Management Structures

IPR is for men and women. So get involved, it's your culture and your law.¹⁰

When a community produces a CD of a traditional song or a story broadcast by the BBC World Service, who owns that product? Who will benefit from any commercial gain from the sale of that product? These are important questions which all communities who produce cultural products will need to answer because of the operation of global laws concerning copyright ownership. One solution is for Indigenous communities to look to the traditional processes which determine ownership of their cultural products. These crucial questions have been dealt with for generations by Indigenous people who traded with each other under the terms of traditional Law. Many communities still use this framework as a way for determining ownership of knowledge.¹¹ In the new communication environment, this has to be extended to include all cultural products including media. But how can this be done within a Western-dominated legal system?

The question of managing intellectual property rights has been taken up directly in the Torres Strait by using traditional management systems to mediate disputes over ownership of land. Researchers from the Into the Millennium Project worked with several Torres Strait Island communities to begin thinking about a practical solution for these questions, based on traditional structures. The Murray Islanders have proposed using their local Native Titleholders' Court system as a way of resolving questions of ownership of Mer intellectual property. The Native Titleholders' Court is made up of representatives of Mer's several clans. Although it sits to determine ownership under non-Indigenous federal law — the *Native Title Act*¹² — it has adopted a process based on traditional approaches. In this way, any dispute over ownership of cultural property — whether a song, a dance or a story —

⁹ Torres Strait Islander Media Association (TISMA) (1999) *It's Our Law and Culture*. The speaker is H Gargnier.

¹⁰ *ibid.* The speaker is A Noah.

¹¹ E Michaels, 'Constraints on Knowledge in an Economy of Oral Information' (1985) 26 *Current Anthropology* 4, pp 505–10.

¹² *Native Title Act* 1993 (Cth).

could be discussed at this forum. Resolutions would be reached via consensus. Now the Torres Strait Island communities are talking about using this same system to determine ownership of intellectual property. The chairman of the Mer Island Council, Ron Day, explains how the Murray Islanders' land management system works:

We have set up what we call a Native Titleholder's tribunal to look after the interests of the traditional owners of the land. So if a developer comes in ... a company from the mainland, the government ... to develop on that piece of land, we have to negotiate with the traditional owners through that body. That body has to mediate between the traditional owner, the Native Titleholder, and the developer. Now we have this body.¹³

Ron Day explains that most of the members of the Native Titleholders' Court are elders of the community representing the eight tribes on Murray Island. The court is totally independent of the Mer Island Council. Any issue concerned with the land or cultural matters comes through the tribunal. It makes everyone's job easier. So the system used on Murray Island has moved towards recognising the existence of two laws — traditional law and the Western common law. The system operating on Murray Island links those two together conceptually. Ron Day suggested that this system could work to resolve copyright ownership disputes.

Torres Strait filmmaker Frank Cook, of Darnley Island, makes the same point when he talks about the need to get permission to film on a particular place from the traditional owners. Film crews from outside the Torres Strait need to contact authorities at both local government and island community council levels to organise support like transport and accommodation. But permission to film must come from the traditional owners. This highlights the importance of an intellectual property management system which is based on traditional structures.¹⁴

The question of a broader Torres Strait-wide management system was taken up by the Torres Strait Islander Media Association (TSIMA). TSIMA's CEO, Aven Noah — an experienced broadcaster and filmmaker — argued that TSIMA was in the best strategic position to mediate issues of ownership of intellectual property throughout the region because of its knowledge base. He suggested that the mediation of IPR issues involving organisations and individuals outside the Torres Strait could be channelled through TSIMA rather than going directly to community councils or local government bodies. Key copyright management agencies like the Australian Performing Right Association (APRA) are already under the umbrella of TSIMA. TSIMA could thus become a clearing house for IPR matters, taking its guidance from a

¹³ TSIMA (1999) *It's Our Law and Culture*.

¹⁴ TSIMA (1999) *You'll Find Out When You Make That Call: Film Protocols in the Torres Strait*, videotape, Griffith University. This project was completed with the assistance of an ARC Collaborative Grant, 'Legal and Cultural Protocols for the Development of Indigenous Arts and Cultural Industries in Queensland'.

community-based reference group. Members of such a reference group would be nominated by the island community councils. Information concerning IPR could then be passed on to the relevant communities for consideration by intellectual property owners at the community level.

A videotape titled *It's Our Law and Culture* was produced to encourage awareness and debate. This is an example of the way in which one community has moved to set up a framework as well as educating its community about IPR issues and how they should be handled using traditional approaches.

The Power of Public Policy

The work undertaken by people in the Torres Strait is a reminder to policy-makers that there is a need for the local people to be active at the highest levels in information and communication policy if there is to be recognition of Indigenous ways of defining IPR. Public policy is very important in shaping the way in which information — including traditional information — is legally and socially defined. The way in which the Australian government favours non-Indigenous structures of ownership is a result of the public policy process. As one international media expert reminds us:

The forms of public policy chosen by the state and their tendencies to favour certain structures of ownership, is becoming central to determining which social groups benefit or are vastly enriched by proprietary control over advanced information technologies, intelligent networks and the content they will carry.¹⁵

Recent developments such as WIPOnet — a worldwide electronic information network for IP matters — might be useful for Indigenous people as a way of trading their IPR across national borders. It offers 'significant opportunities to promote the use, protection of, and trade in IPR across the globe'.¹⁶ International developments such as these can not be ignored by the Indigenous communication sector. Issues like IPR are as much a part of the communication environment as the technology that allows people to communicate. ATSIC has begun to address the issue of IPR, but it is important to link this to the communication sector. And the best people to do this are those who know about communication. The main points are these:

- Indigenous people, through their communities and representative bodies, must work to introduce policies which recognise existing traditional structures of ownership of cultural property.
- Communities need to set up processes to determine ownership of cultural products and management structures based on traditional lines. As the

¹⁵ S Venturelli, 'Ownership of Cultural Expression: Speech and Culture in the New Intellectual Property Rights Regime of the European Union' (2000) 17 *Telematics and Infomatics* 1–2, pp 9–37

¹⁶ K Idris, 'WIPOnet Charts Course for IP Information Exchange in the Digital Age' (2000) 22 *World Patent Information* 1–2, pp 63–66.

Torres Strait experience suggests, perhaps the best place for this process to start is at the clan level.

- Indigenous communities and their representative organisations should be aware of current IP debates and be active in the policy-making process to ensure Indigenous perspectives are represented.

The Traditional Economy

Of course racism, dispossession and trauma are the ultimate explanations for our precarious situation as a people. But the point is: they do not explain our recent, rapid and almost total social breakdown ... our current social dysfunction is caused by the artificial economy of our communities and by the corrupting nature of passive welfare¹⁷

Communication and the Traditional Economy

Murray Island Chairman Ron Day describes how people from Mer, Stephens Island (85 kilometres away) and Darnley Island (55 kilometres away) traditionally joined up for festivals.¹⁸ With no modern communication systems like telephones, they 'knew' when it was time to celebrate. He concludes: 'I don't know how, maybe it was telepathy.' Like many others, Ron Day acknowledges that communication was a central part of the traditional economy:

The main thing is the sharing of the concept of spirituality. I think that was the main thing because people have to be in contact with other people and the only way you can do that is through something spiritual like [with] Darnley and Stephens, for example, and I'm sure they had some sort of contact. In my tribal area we had what we call a communication point where people go to get information from other islands, including Kaurareg (Thursday Island).¹⁹

The difficulty for people in the Torres Strait is that missionaries imposed a new spirituality on people. Islanders now need to rediscover 'the old ways'. Ron Day sees these contradictions but he also acknowledges that, prior to the arrival of the London Missionary Society in the Torres Strait in 1871, the traditional economy had established an order:

Today we're finding it hard to get it [the traditional structure] back because most of the young people won't cooperate. They just feel they are not part of it. So we have to sit down and get this small community

¹⁷ N Pearson (2000) *Our Right to Take Responsibility*, Noel Pearson and Associates, p. 38.

¹⁸ Interview with Ron Day, Cairns, 10 July 2000.

¹⁹ *ibid.*

to understand from where they came to exist. What was in place before. There was an order of something that made them to be what they are now.²⁰

Indigenous Intellectuals like Noel Pearson and Ron Day have no doubt of the value of traditional structures as a framework for modern Indigenous society — and communication. Pearson writes: ‘Central to the recovery and empowerment of Aboriginal society will be the restoration of Aboriginal values and Aboriginal relationships which have their roots in our traditional society.’²¹ Pearson acknowledges that, despite all the losses Indigenous people have undergone, what has survived are traditional relationships, values and attitudes — Aboriginal Law — which give structure and strength to families and communities.²²

The ‘Dreaming Tracks’ which criss-cross the continent are ‘information conduits’ or media, along which people travel, carrying goods for exchange and moving to ceremonial sites. This is an important part of how traditional economies are managed.²³ But the traditional or subsistence economy has given way, in most parts of the country, to a cash economy, or an artificial economy based on ‘passive welfare’. Noel Pearson suggests that both the traditional economy and the ‘whitefella’ market economy are ‘real’ in that, to participate, people must work. In traditional economies, work was a necessity or people starved; in the market economy, people work to get paid.²⁴

Traditional Structures of Governance

Like Ron Day, Pearson stresses the importance of seeking out traditional structures of governance for Indigenous societies — regional, community and clan-based.²⁵ Just as the Mer Islanders have proposed a traditional management system for intellectual property, the processes of traditional subsistence economies — with their in-built systems of responsibility and reciprocity — may offer a model for Indigenous communication. Unless communication processes are part of this traditional economy, their chances of success seem minimal. This could be one reason for the inability of most BRACS units across Cape York to reach their potential.²⁶ Communities feel no ownership of them. They are not part of community social structures or part of the traditional economy.

²⁰ *ibid.*

²¹ Pearson (2000) *Our Right to Take Responsibility*, p 20.

²² *ibid.*, p 28.

²³ E Michaels (1986) *Aboriginal Invention of Television in Central Australia 1982–1985*, Australian Institute of Aboriginal Studies, p 508.

²⁴ N Pearson (2000) *Our Right to Take Responsibility*, p 5.

²⁵ *ibid.*, p 68.

²⁶ Interview with A Harris (Project Officer, Apunipima Cape York Health Council), Cairns, 11 July 2000.

The Cape York Digital Network

The Cape York Digital Network (CYDN) is an innovative use of communication technology reliant on working within the traditional economy on the Cape — particularly the key aspects of responsibility and reciprocity. The CYDN's initial funding came from the Balkanu Cape York Development Corporation through a Networking the Nation initiative. The project aims to provide electronic communications throughout Cape York through a wide range of services. Project manager Daniel Grainger sums up his relationship with the communities he serves: 'The future of technology in Cape York? Just wherever they want to go.'

The CYDN has learnt from the mistakes of BRACS and sees it as essential to 'get management priorities right so that they reflect the wishes of people on the ground so members of the community get their voices heard' While the traditional economy may be a basis on which the CYDN is being developed, it does not mean that technology cannot play a key role: 'Cultures evolve, our traditions evolve and our abilities don't have to remain stagnant. And our mob aren't stupid. We can sit in front of a computer as much as the next person.'²⁷

Functionality

The approach adopted by the CYDN is to keep its approach simple. Every decision on how technology might be used is based on its 'functionality' — in other words, on how the community will use it. This means that all decisions about particular technology use must be referred to the end users — the communities. In this way, Grainger sees technology in simple terms: 'It's just a tool, a vehicle to do something — nothing more, nothing less. It'll fail if it's got no use. That's the only reason it'll fail.'²⁸ The CYDN ran a series of expos across Cape York communities to train young people, in particular, in computer use.

The kids picked it up quickly. Now I don't know why they picked it up quickly but they picked up websites and hyperlink stuff. It must be intuitive because the kids knew what was happening. They knew what to check — troubleshooting, checking connections, etc. Kids are smart. I was very impressed by that. The technology is not commonsense stuff but everyone's got basic troubleshooting and everyone's logical and you can work things out if you sit down and not have a phobia about it. Sometimes I think we develop these phobias and say, 'Well, too hard, too much technology, too hard'²⁹

The touring expo sessions included videoconferenced links between people in prison and their families and demonstrations of 'telemedicine' through the state Health Department. The CYDN sees itself responding to

²⁷ Interview with D Grainger, Cairns, 10 July 2000.

²⁸ *ibid.*

²⁹ *ibid.*

community demands for access to current technology as soon as possible because so many services available to the wider Australian community — like teleconferencing and e-commerce — are not yet available on Cape York and are vital to an area so remote. It is worth noting here that ‘trust’ has been identified as one of the key elements of successful e-commerce in intellectual property.³⁰ This seems remarkably similar to the very basis of the values of a traditional Indigenous economy — responsibility and reciprocity. It would seem to place Indigenous people in a good position to develop such opportunities. And, as Morris reminds us, Indigenous people have been involved in trading intellectual property since well before the arrival of the First Fleet in 1788.³¹ They, far more than the European invaders, ‘understood the importance of goodwill and interaction with their neighbours’.

Like the young people on Cape York, the elders also see a use for communication technology, although they have voiced concerns about access to websites showing pornography or giving information on how to build a bomb — similar to concerns held by parents everywhere. As Grainger explains, it is merely a matter of configuring the system to exclude offensive destinations and he believes the Cape York communities understand the promise and limitations of the digital network:

I think [Cape York] people have got it right. People are just focusing on functionality whereas I do believe people were saying ‘Too much of a technical nightmare’. I think we can get the technology and make it bow down for the functional visions that our mob and our elders want.³²

Diversity

Grainger acknowledges that the many communities across Cape York will respond differently to their technological needs — Aurukun might prefer Internet access but Hope Vale might want videoconferencing. The system must be dynamic to cater for these various needs. This was a major failing of the implementation of the BRACS system, where all communities received the same technology package whether they wanted it or not. A ‘revitalisation’ of the BRACS scheme in the mid-1990s continued with the existing system.³³

³⁰ C Bock ‘The Need for Trust in Electronic Commerce in Intellectual Property’ (1999) 21 *World Patent Information* 4, pp 237–39.

³¹ C Morris (2000) ‘Constitutional Dreaming’, in C Samford and T Round (eds) *Beyond the Republic Meeting the Global Challenges to Constitutionalism*, Federation Press.

³² Interview with D Grainger, Cairns, 10 July 2000.

³³ See Department of Transport and Communicationns (DOTAC) (1990) *Review of Remote Area Television Services Discussion Paper*, AGPS; ATSIIC (1993) *Aboriginal and Torres Strait Islander Broadcasting Policy: Review Report and Draft Policy Statement*, Infrastructure Branch, January pp 4–6; ATSIIC (1999) *Digital Dreaming: A National Review of Indigenous Media and Communications*, ATSIIC, p 9.

The CYDN is aiming to establish a management system which reflects the key elements of both the traditional and the market economy. However, a primary consideration is how the Cape York communities want to use the technology:

We want to be functionally focused. Too much thought has been given to the technical side. We've only got so much capacity and effort. We've got to concentrate it at the right place. We're community servicing. We're not technologically researching and developing and all that type of stuff. If the unis want to walk in and see what we do — come and assist us in developing these technologies. But ours will be a business arrangement and the only way this is going to survive is through business. And we've got to get the business right; so we've got to treat our mob right — are we giving them what they want?³⁴

The main points are these:

- The processes of the traditional economy — specifically responsibility and reciprocity — offer a framework upon which Indigenous communication should be based.
- While Indigenous communication may provide a first level of service in many areas across the country, the management structure should avoid a bureaucratic welfare model. Instead, traditional structures of governance should be considered.
- Communication technologies adopted must relate to their functionality. Unless there is a clear use for them by Indigenous communities, they seem destined to fail.
- Indigenous media enterprises should learn from the mistakes in the implementation of BRACS and acknowledge the diverse needs of their audiences.

Knowledge Management and Knowledge Workers

All knowledge is political; that is, it is constructed by relationships of power — of domination and subordination — and is inseparable from these. Power is, therefore, productive of knowledge.³⁵

Knowledge Management

As a natural consequence of the increasing importance of knowledge as a global indicator of strength and power, the ways in which Indigenous people deal with knowledge — 'knowledge management' — is a key issue. Morris spent time working in the Central Australia Aboriginal Media Association

³⁴ Interview with D Grainger, Cairns, 10 July 2000.

³⁵ L Wong (1998) *Management Theory Meets the 'Other'*, Monash University, p 3.

(CAAMA) offices to look at the processes by which this innovative organisation deals with knowledge and what this might offer other organisations. Once again, the background knowledge offered by Brad Sherman helped her to recognise and tease out the following concepts. She was also ably helped by the then human resources manager.

Western management theory recognises some of the questions that are central in understanding why Indigenous management styles should be different. Wong suggests a range of ideas leads to the construction of 'official knowledge' in management — questions like:

- what counts as knowledge;
- the way in which knowledge is organised;
- who is empowered to teach it;
- what counts as an appropriate display of having learned it; and
- who is allowed to ask and answer all these questions?³⁶

Many Indigenous people will be familiar with these issues, having to deal with them every day. But funding bodies would be wise to make it part of their management practice to constantly reassess their performance indicators of Indigenous management in the light of these criteria. Taking another approach — perhaps more good advice for funding bodies — Knights and Morgan suggest that good management should:

- become more receptive to differences and otherness;
- adopt a means of learning and understanding the other;
- become aware of alternative knowledge and practices; and
- be aware of one's own position in the construction of truth.³⁷

Here, what we mean by the 'Other' is Indigenous people. This approach is suggesting the need for a greater understanding of other ways of doing things. Indigenous and non-Indigenous management styles will be quite different because each is dealing with different concepts of knowledge and how it should be managed. Paulson has argued:

Not only does Western society differ from Indigenous People in terms of cosmology, ideology and worldview but in all of the universal values. [A] discussion of the universal values and the difference

³⁶ *ibid*, p 3.

³⁷ D Knights and G Morgan, 'Corporate Strategy, Organisations and Subjectivity: A Critique' (1991) 12 *Organisation Studies* pp 251–73.

between Western and Indigenous experiences of them clearly shows the tensions between the two social systems.³⁸

So how can Indigenous organisations deal with some of these management issues? In organisations like CAAMA, which is made up largely of creative staff, knowledge management must be seen from an intellectual property perspective.

Indigenous Intellectual Property Rights

CAAMA has an Indigenisation policy which means that non-Indigenous staff must move on when they have successfully trained an Indigenous person in the role. Therefore, it is essential that 'knowledge management' be discussed in terms not only of human resources, but also of the implications of intellectual property rights. Franey points out that Indigenous people have a different sense of IP than non-Indigenous people — for example, management must vet the use of Indigenous knowledge before it can be placed in the public domain.³⁹ Non-Indigenous people have experienced this difference.⁴⁰ When Indigenous and non-Indigenous people work together, there is a 'sharing of knowledge' that can create tensions.⁴¹

Franey argues that researchers wrongly assume that, because they have researched a people, or collaborated in the research, they are entitled to go out on their own and do as they see fit with the IP from that research. The present laws of copyright allow people to do this as long as there is acknowledgment and it is in the public domain.⁴² However, this is non-Indigenous law and does not include values such as reciprocity, central to the operation of Indigenous Law. As Paulson points out: 'We are a relational-type society. Our whole system is held together by relationships, the relationship between individuals in our society is more important than the simple performance of task.'⁴³ So when Indigenous people enter a community, they must first ask themselves: 'What is it that they require of me?' not 'What can I do for them?'⁴⁴ This is why it is important to understand the different cultural laws in relation to intellectual property, which go beyond mere reciprocity.

³⁸ G Paulson (1996) 'The Value of Aboriginal Culture', in G Patel-Gray (ed) *Aboriginal Spirituality Past, Present and Future*, Harper Collins Religious, p 82

³⁹ Interviews with M Franey (Deputy General Manager of the Central Australian Aboriginal Media Association), Alice Springs, February and April 1998.

⁴⁰ See E Michaels (1994) *Bad Aboriginal Art*, Allen & Unwin.

⁴¹ C Morris 'The Responsibility of Maintaining the Oldest Continuous Culture in the World (1997) 4 *Indigenous Law Bulletin* 2.

⁴² Interview with M Franey, Alice Springs, April 1998

⁴³ Paulson (1996) 'The Value of Aboriginal Culture', p 85.

⁴⁴ Interview with M Franey, Alice Springs, April 1998.

Knowledge Workers

Knowledge, as we now know, is the key factor determining the strength and prosperity of nations. As Australia is increasingly influenced by international and global factors, and makes its transition from an economy based on the wealth of its physical resources and commodities to a knowledge economy based on its competitive advantage in the fields of biotechnology and informational technology, so too must Indigenous people shift their emphasis. The comparative advantage that Indigenous have which is rarely acknowledge is their ability to innovate — to generate knowledge, ideas and adapt technologies to their own requirements.

We suggest that the future of Indigenous people lies in participating in the global village as knowledge workers. But many find it hard to imagine Indigenous people doing this in the present political climate. Observations by Noel Pearson give a dismal view of the present, but there are solutions being put forward to tap into the capacity of the people to compete internationally.⁴⁵ The views in *Our Culture: Our Future — A Report on Australian Indigenous Cultural and Intellectual Property Rights* suggest Indigenous people are on a downward spiral of exploitation when they try to enter the knowledge market.⁴⁶

These limited attitudes normally are voiced by those who are not innovators but rather advocates. As Daniel Grainger has stressed, it all comes down to functionality. There is nothing to prevent innovative ideas on how to use existing technology from being traded internationally. We have suggested that these ideas seem likely to succeed only if they are developed within Indigenous frameworks for managing knowledge — if they are functional and are managed by organisations with a high level of cultural accountability. This is what may makes these ideas stand out from the rest. Grainger reminds us that Indigenous people can do anything: 'We're into law, art, media — they're as hard as technology.'⁴⁷

Conclusion

We have stressed that the solutions to many of the issues facing the Indigenous communication sector lie in applying traditional frameworks to present-day issues. Indigenous peoples have developed and applied systems for managing these for millennia. Communication in its varied forms has played a central symbolic role in this process. Through trade/gift exchange, social relations are established and reaffirmed. Intellectual property was also traded along with pearl shells, canoes and ochre, for example. The communication hub identified by Ron Day on Murray Island acted like a traditional telecommunications network where information about the movement of people and property through the Torres Strait could be monitored.⁴⁸ Similarly, trading routes across

⁴⁵ Pearson (2000) *Our Right to Take Responsibility*.

⁴⁶ T Janke (1998) *Our Culture, Our Future: Proposals for the Recognition and Protection of Indigenous Cultural and Intellectual Property*, M Frankel and Co.

⁴⁷ Interview with D Grainger, Cairns, 10 July 2000.

⁴⁸ Interview with R Day, Cairns, 10 July 2000.

the continent linked up with sea routes, all of which were communication corridors.

New developments like the Cape York Digital Network combine mainstream management approaches by looking at political, economic, social, technical, educational and legal aspects (PESTEL) with a high level of cultural accountability. The CYDN has set out to identify what use the Cape communities might make of various communication technologies. Only then can technological solutions be applied. This is one of its primary goals.

Funding bodies, policy-makers and politicians need to recognise or ratify that another law — Indigenous law — exists, operates and influences value judgments and decision-making processes. This does not mean paying lip service to a customary 'lore'.⁴⁹ Indigenous cultures have a Law just as valid as any other law. The term 'lore' in Morris opinion has been a useful term for the negation rather than the verification of Indigenous Law as a Full Law. Traditional economies are about building relationships and kinship systems between clans, with the main commodity being intellectual property. This is the basis for then establishing international relationships. Indigenous people were involved in international relations with the people of modern nations like Indonesia, Papua New Guinea, and the Pacific Island countries for generations before the arrival of the first non-Indigenous explorers.

Indigenous organisations, along with key funding bodies, must recognise that organisational structures that employ Indigenous people are not substitutes for clans — they cannot substitute for clan authority. They merely fulfil Western economic requirements. The clan is the place where an individual gets identity, whereas the organisation is a bureaucracy designed to support, not replace. But because of Western economic dominance, organisations inadvertently become the focus for power and the trendsetters for what are identified as Indigenous values and culture.

Stakeholders in Indigenous communication must recognise the existence of Indigenous intellect and innovation which flows from millennia of experience. Stakeholders must ask when they enter communities: are they enhancing or inhibiting this? Is the service provided by the stakeholder dominated by Western criteria of intelligence and moral behaviour? Does the service impose a foreign set of ethics?

In conclusion, this article has attempted to converge the research carried out in both the Cultural and Legal Protocol Project and the Into the Millennium Project. These two projects have intersected, with one offering the opportunity for theoretical consideration whilst the other offered a practical 'people's participatory' contribution. As stated earlier, research must allow people to participate in the process of finding solutions and also leave behind as much knowledge and information with those people as possible, so that they can continue to adapt and innovate to deal with it as they see fit.

⁴⁹ Morris (2000) 'Constitutional Dreaming'.