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Protecting channels of communication: some challenges from the Pacific

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A collaborative research project under the rubric of 'Property, Transactions and Creation' (PTC) listens to some questions being voiced by Pacific Islanders searching for a Model Law for the Protection of Traditional Knowledge and Expressions of Culture. In particular, Papua New Guinea concerns with reproduction lead the anthropologist to ask about the connection between the reproduction of things and the reproduction of relations, and how far analogies with copyright help interpret practices of transmission and the role of payment.

Imagine yourself in Papua New Guinea (and specifically Leileiyafa village, Suau, Milne Bay Province, PNG) in 1999.¹ When it comes to fundraising for the church (United Church), ways of drumming up 'community' support have momentarily settled into a regular pattern. With plans to construct a new permanent materials church, Leileiyafa people turned to a new quasi-ceremonial type of competition or festival² imported to the area in the early 1990s. A fund-raising village fete might be the nearest comparison, though the competition is more organised, and involves clans as well as individuals. Leileiyafa, which had never done this before, held its first in 1997. Groups compete to raise the most money *and* to make the best presentation of it, often with decorations and singing -- innovation / idiosyncrasy is appreciated. Let me give an example.

¹ From Melissa Demian, presentation to PTC (see Acknowledgement.); also Demian 2004; n.d.

² The Motuan *boubou* system has been documented by Gregory in 'Gifts to men and gifts to God' (1982).

On this occasion a flagpole was constructed near the church and the flag was 'won' by those contributing the most money, a total of K1300 from a consortium of 8 groups (four deacon's groups from contiguous hamlets, three 'families' or representatives of in-married lineages from other villages, and the Local, the smallest organisational unit of the United Church).³ Now rather than decorating their money with banners and song, another group did something more notable -- hiding it. They tucked their donation away inside a crabshell, in reference to the fact that they had made their money by selling mangrove crabs at an urban market. The innovation, regarded as idiosyncrasy or 'style' in the vernacular,⁴ was commented on. In turn it seemingly inspired the ethnographer (Melissa Demian). She wanted to offer K100 (the range tuned out to be K400-K11) but was embarrassed to give that sum from one person, so she pretended to find the money under her baseball cap. She drew the money out with an exclamation of surprise at her discovery. Afterwards the pastor said he had a question for her: 'Is that the way you do things in your place (*kastom*) or did you make it up (your style)?' He was wondering how innovative Melissa herself had been or if this was an innovation that was standard practice in another place.

The incident introduces some observations made during the course of a set of anthropological studies in Papua New Guinea. These were undertaken at a time when, in response to TRIPS, the PNG parliament was enacting IPR legislation, while members of its Cultural Commission and others were simultaneously involved in developing, under the auspices of WIPO, a Pacific wide Model Law for the protection of traditional knowledge and expressions of culture.⁵ The relevance to copyright will emerge.

Paying for innovation

Some people work hard at innovation. Residents of Reite village (Negkini, Rai Coast Madang Province, PNG, in 2000), for example, find themselves under pressure for

³ 'Transforming as a gift to god and released in the expectation of triggering the blessing of God and the *mana* of the chiefs (Gregory 1982: 208), money, entangled and embedded, relinquishes its capacity to modernise' (Abramson 1999: 262). Abramson's observation is apropos Fiji, where donations to the church are part of the intimate entanglement of church and chief, the chief's drinking ceremony concluding the regular Sunday service. Perhaps in the PNG case the analogue to chiefly presence is that of kin groups who, as distinct and self-promoting entities, are caught up in the monetary provisioning.

⁴ As elsewhere in PNG, 'style' is used to refer to the distinctive characteristics or flourishes that mark one individual out from another -- including the individual as a kin group whose members claim ownership of that 'mark'. It may be possible to purchase a style, or demand payment for unauthorised imitation.

⁵ Papua New Guinea is among many states faced with international pressure to protect outside investment through intellectual property provisions. In the wake of the WTO agreement on TRIPS (Trade Related Aspects of Intellectual Property Rights), it honoured its obligation to introduce legislation on copyright and patents in 2000.

resources. James Leach⁶ has reported how it is actually getting harder to generate income. We are talking of small amounts of cash, but crucially the difference between being able to pay their children's school fees and not -- a potent symbol of the future. How do these people make do with very little, when they need cash for innumerable expenditures? They speed up its circulation, making money travel more quickly from hand to hand, and assume that when money flows it grows.⁷ For example they organise 'rice parties' which is like sharing food but on a paying basis. Rice parties are one of many attempts at financial innovation. Borrowed not from a particular place (as in the ceremony just described), but from ubiquitous urban practices, they have fast found popularity. One reason is that they operate rather like a speeded-up version of an already existing local (re)distribution cycle based on the *palem* (the 'body' of kin who together make payments to affines, relatives by marriage). These were occasions when you had to 'think on' relatives of all kinds; now there are more occasions when the flow of money means that you have to do so.⁸

Interestingly, there is something of a tension between selling plates of rice for individual reasons ('private rice') and attempts by the village to use the same mechanism to generate income for social benefits, such as a new school building. Critics say that they should stop cooking rice for individual profit and restrict it to 'community' projects only. Sometimes people claim their private rice is to raise money for school fees, but then it goes on something else. But one of the real problems is that it is the kind of practice, namely 'business', that anyone can copy, and it is hard to retain much competitive edge. Here they contrast business with *kastom*.

The following [this paragraph] is taken more less verbatim from Leach's account. He records (2004: 154-6) being struck by a contrast between the (lack of) claims people made to innovations in business practices and the (constant, highly articulated) claims they made to innovations in religious and musical practice. Someone said,

⁶ Much of this comes from Leach 2000; 2004.

⁷ On growth generally, and elsewhere in this part of the world: Crook 1999; forthcoming.

⁸ One household invited people to purchase plates of cooked rice and stew. On an initial outlay of K50 (25kg rice bought for K27 and tinned fish, meat and noodles for K23), and their own vegetables and coconut, they ask K3 for a plate of rice and K1 for a 5th share of a 500ml bottle of alcohol, making K120 and thus K70 monetary profit on the food. The householder had been invited on several other occasions by kin and affines to their functions, and this was a 'return' -- an opportunity to call in his debts. Some 50 people turned up, not all of whom had been invited, largely from affinal villages which owed him a return. Note that charging K3 a plate was to recover debt -- he had paid the same himself elsewhere -- whereas plates of rice for those who had come uninvited, i.e. on whom there was no existing obligation to make a K3 purchase, were sold directly at 40t.(cents).

'Whatever you find, through your own endeavour, in the arena of the spirit cult [or Tamberan] belongs to all of us as a family. It is for us all to generate a name for ourselves and consume pigs on the basis of this name. But whatever innovations you accomplish on the side of business, you cannot claim [the idea behind]'.

[Leach continues] People are constantly trying new ways of making money -- one will construct an oven from old oil drum and cook cakes for sale, another develop a system of gambling for plates of food. Yet such new ideas are not equivalent to a new spirit Tamberan. Reite people complain that whenever anyone comes up with a new idea for a business venture, everyone follows suit, and soon the market is flooded. They describe this as 'an idiotic custom of ours', to copy and repeat others ideas (*tawa'narning*). The word is the same as is used for the defamation of a spirit voice, that is, to copy without acknowledgement. Yet it does not bring the same penalties. When questioned about someone copying their business idea, people reply that everyone wants money, and anyone to try any way of doing so. Business practices may be novel, but become generalised knowledge. By contrast, what is not generalised is the particular creativity which is understood to be part of a family and its interactions with its ancestors, spirits and land. This form of creativity is based in named groups of kin. Thus spirit/songs are generated through relationships and relationships are seen as a resource belonging to those they connect. Reproduction is here understood as the regeneration of people and places and the power over the instruments of reproduction is multiply owned. It is inappropriate for any one person to stake a claim, even when the new song originated in an individual's mind.⁹

So what is this confidence in the power of spirit songs and similar instruments? Making claims public is accomplished through a process somewhat analogous to asserting copyright. What is protected is a power rather than a right, but we could call it the right to transmit creativity. Recall the complaint made of business innovations, that you cannot hold on to things when there is no payment; you cannot be acknowledged as the person who passes them on either. It is payment that confers the 'right' to transmission.

Let us consider an example.¹⁰

In 1998 people in a village called Goriong decided they wanted to purchase the tune, words and carvings of a particular Tamberan [ancestral] spirit from the neighbouring village of Seriang. Ten men who claimed to be the descendants

⁹ In business however, other claims (from kin etc) may be an embarrassment.

¹⁰ From Strathern in press, from which the rest of this account is also adapted.

of the originator of the spirit voice went to receive payment. The Goriong purchasers called each by name and placed money and other items in his hands, as well as handing over a live pig. The men took the pig back to Seriang, cooked it and distributed it among the villagers. Thus the transfer of the spirit voice was made public. (Leach 2000: 66-7, paraphrased.)

The transaction enabled the Goriong to sing and dance in the name of this spirit. It is important that the songs are rendered in a way that keeps their integrity; they evoke memories of the dead and are highly charged for their original owners, and the new owners should do nothing to defame or mock the Tamberan spirit. However, since the latter had made a payment, they became entitled to pass it on in turn and profit from the payments it would bring them. This contrasts with situations where someone may ask permission to use a song or dance but acquires only use-rights, and cannot refer to themselves as 'owner' as the Goriong were now entitled to do. In the process the original Seriang lost nothing: they could still use the Tamberan [ancestral spirit] voice for their own celebrations.¹¹

The form eventually brought on display may thus be an original and a derivative at the same time. The new owners acknowledge the source from which the Tamberan voice came, for it is a Tamberan that originated at a particular place that they dance and sing. Transactions at the moment of transfer not only secure the release of the practices for use but multiply their origins; both those who had it and those who obtained it may be considered sources of the new practices (even if not to the same degree). Beyond these originators, what is also brought into being are multiple destinations for the creation, in the people who will witness the display. Part of the value of the new spirit voice, then, lies in the fact that it has come from elsewhere -- and specifically from a known source.

Songs and performances are forms of expression which Euro-Americans may class as intellectual products. Of interest in this session on copyright is the link with *reproduction*. In this part of the world, kinship relations offer a crucial clue to how such expressions are owned. When people are identified as members of kin groups, these groups are being defined precisely by the interest they have in their members' reproductive capacity. Indeed, what people can own in such persons is also what they can own in artefacts, namely, regenerative potential.

¹¹ At the same time, the spirit is now lodged in another network of people and, hidden from view, people may dream of new designs or forms. Tamberan songs are being innovated all the time, and this includes the dreaming of 'new' Tamberan, which are made public with the distribution of pork among the dreamer's co-villagers who thereby become the new Tamberan's co-owners (Leach n.d.; see also 2003). Although an innovation may have a single creator, it is owned by the residential group, who would together be paid if it were transferred to another.

A comparison with copyright?

A case can be made for considering a range of tangible as well as intangible artefacts here, including ornaments and music. The owner's own regenerative capacity is demonstrated to the extent that he or she exercises the power to reproduce the artefact. That in turn, the ownability of something, becomes one of its attributes. A case can also be made for claiming that these particular conditions have broad currency across Papua New Guinea. People are concerned about where and how various 'cultural expressions' appear, especially as items such as songs circulate readily between persons and groups (invariably because of their reference to fertility and potency). It is widely the case that although these forms of expression are in one sense detachable from persons, their reference to persons is emphatically part of their value. In other words, as we saw in the case of the Tamberan, the *origin of such artefacts in the lives of others* contributes to their distinctiveness and importance. Conversely, they demonstrate the reproductive power of those lives: the transferral of the right of possession is at once an example of it and a sign of it.

That such items can be transacted introduces a further possibility in the reproduction of persons: other people's generative power can be appropriated for oneself. So there is a form of generativity that can be transferred independently of the propagation of an 'originary' group. For interest is not just in the things acquired through transactions: explicit value is put on maintaining flow itself. This was notably enunciated by Nick Araho (Whimp & Busse 2000: 186-8) in his summary of a discussion at a seminar on intellectual, biological and cultural property held in Port Moresby in 1997:

Borrowing information between groups characterises Papua New Guinea; nobody should interfere with that. The sharing of information ... only requires permission or the exchange of certain gifts. Thus, no actions should be taken that might stop the flow of information exchange through traditional channels.

Borrowing, sharing, exchanging are all effected through payments; keeping the flow going acquires generative connotations of its own. An ability to release generativity is bound up in the 'right' to pass things on to others. Conversely, the inability to do is associated with failure to reproduce.

Marta Rohatynskyj's (1997; n.d.) description of the Omie people (Central Province[?], PNG) from the same period, is apposite. Omie now work with the notion of themselves as a group with a unique culture (1997: 439), and this 'culture' now figures in their self-accounts. People talk about what happens to knowledge [in

English] such as the knowledge their seniors have vested in the anthropologist.¹² 'Knowledge' offers a new idiom in which to talk about new transformations, including people's perceptions of themselves as people with a 'culture', much of which turns out to consist of '(cultural) knowledge'. Betrayal or loss of culture / knowledge is a language Papua New Guineans routinely adopt for their present condition (cf. Kirsch 2001). When talking of the disappearance of old songs, Omie thus lament, 'We have lost our customs' (1997: 450). This is not the place to consider the nuances of Melanesian *kastom* ('custom')¹³ or the inadequacy of its translation as 'tradition'. In being made to stand for what people transmitted to one another in the past, its usage may obscure an intergenerational dynamic where, in the eyes of some (usually seniors), other people (usually juniors) appear to have lost interest in restrictions on circulation (Sykes n.d.).¹⁴ To the elders, that means they are not reproducing themselves in relation to specific others.

There are many instances, then, where one might draw parallels with items that in Euro-American legal regimes can become property subject to intellectual property protection: songs, carvings, choreography, moral rights (in maintaining the integrity of a piece of work), personal images, emblems, and one could regard groups as having a proprietary identity to protect. Many depend on performance to be made visible, so that they only appear for a while and in the interim exist as memories of designs, patterns, movements. Similarly, there are many contexts in which control over reproduction is restricted. The primary comparison would be with copyright, although many limits to it (the comparison) spring to mind.¹⁵ The Papua New Guinean lawyer Lawrence Kalinoe (2004), who sat on the National Intellectual Property Rights Committee while legislation was being formulated, notes one bias that copyright would introduce. When contemporary artists draw on traditional art forms, such as Tamberan songs, copyright would appear to be the means to protect

¹² The ethnographer (Rohatynskyj n.d.) must ask questions about the nature of the transactions by which she came to acquire cultural knowledge from the Omie, what her ownership of it means and what then she must do with its form embodied in narrative on tape. More generally, people's interest in their futures go alongside anthropologists' sensibilities about the ownership of knowledge, these sensibilities being nurtured from two distinct sources: postcolonial critique and an IPR sensitive world. For a robust criticism along these lines of my own research (and that of others) in Mt Hagen, see Muke 2000.

¹³ For a recent synthesis based on Vanuatu materials, see Bolton 2003. Blakeney (2000: 251-2) observes that replacing 'folklore' by 'traditional knowledge' in the IPR area, 'significantly changes the discourse', his particular interest being the shift from copyright-related concerns to patents law and biodiversity in response to that part of 'traditional knowledge' concerned (for example) with plants and animals in medical treatment.

¹⁴ In the same way as the discourse of property, Brown (1998) argues, obscures or displaces what should be an extensive moral discussion on the implications of exposing Native people's 'sacred' knowledge to unwarranted scrutiny.

¹⁵ The literature here includes that cited by Coombe 1998; Brown 2003. Insofar as it covers the expression of form, copyright is often taken as a model for the protection of cultural property.

their artistic expressions. But while copyright declares their originality, it does not deal with the other side of the equation -- the simultaneously derivative nature of the work and its multiple origins.¹⁶

However, that draws too quick a comparison between indigenous protocols that govern the transmission and transaction of performances, artefacts and so forth, and regimes that seek to protect the products of intellectual work. We have already seen that loss of 'custom' nowadays may be glossed as loss of (traditional / cultural) 'knowledge'. It may be necessary to scrape off that gloss. Kalinoe (2004) has argued the case for considering the protection of various items of value, especially of the class that he calls 'sacred' (such as those with ancestral value, ancestral not because they are antique but because it is the living presence of ancestors in their descendants that guarantees continuity of inner power). Significantly, his proposal is that these should be treated, for legal purposes, simply as property -- emphatically *not* as intellectual property. Rather, finding a suitable regulatory regime for 'indigenous cultural and intellectual property and traditional knowledge' can be significantly enhanced if we separate the issues relevant to a regime for the preservation of culture from those relevant to the implementation of IPR protection. One reason Kalinoe offers for avoiding the IPR route in the protection of cultural property is because IPR brings things into the public eye. The limited restriction guaranteed by IPR protection is nothing compared to the long term publication entailed when the copyright (say) expires. He is thinking of items identified with particular groups -- like the Tamberan songs described above -- which should only be revealed under controlled conditions e.g. when the moment for their reproduction is ripe. The public domain aspect of IPR is well known to cause problems for this kind of resource (Brown 1998; Brush 1999).

Now all the items just mentioned (songs, names, carvings, performance, moral rights, emblems and proprietary identity) could be bundled up in the single instance of Malanggan carvings in New Ireland and their accompanying displays.¹⁷ In respect of the designs worked on the carvings themselves, the way in which these figures are guarded from unauthorised imitation have compelled observers to use the vocabulary of IPR, especially copyright (but see Strathern 2001). These New Ireland carvings are prototypically regarded as an external body for the departed presence of a deceased person whose potency is retained within, for the sculpture

¹⁶ An analogue in Euro-American contexts might be conflicting demands on copyright as applying to something both individual and replicable (Sherman and Bently 1999: 55).

¹⁷ I draw particularly on Küchler 1987, 1992, 1999, sometimes verbatim; also Lincoln 1987. I am grateful to Karen Sykes (and see Sykes 2004) for many discussions, during the PTC project and after.

gives an imagistic form to the name of an ancestor that, detached from the deceased's body, can then be passed on to a child;¹⁸ they point to a consistent orientation towards future, in that the designs reflect anticipated claims (for example, to land) for which the recipients make payments. Above all, the image is owned by, retained in the memory of, those who have the right to reproduce it and whose payment for doing so is accepted.¹⁹ However, the one issue I wish to bring forward from Susanne Kuchler's extensive study of Malanggan is her comment that 'Melanesia is a particularly clear example of a culture within which intellectual property is not an analogue of material property' (1999: 63). Given the mix of tangible and intangible items here, we might ask what she means by that. The answer will open up the question of whether it is useful, in fact, to think of any of them as intellectual products.

The context of the remark is a discussion (begun by Harrison 1992; 1995) about the nature of mental resources in Euro-American societies of 'the modern industrial economy', which lay stress on 'material resources and productive capacity' (Kuchler 1999: 62). The reproduction of mental products is here governed by a legal system in which intangible efforts have to be embodied in things for rights to be exercised over them. The contrast is with regimes, such as Kuchler describes, where intermittent Malanggan performances over a person's lifespan are part of 'a shared knowledge technology [that] assures the continuing generative and reproductive capacity of its intangible resources' (1999: 63). She has in mind here the deliberate ephemerality of items produced for display, where (in her words) ownership centres less on the object as a material product than on the right to project or produce an image. Particularly true of the Malanggan carvings, what is created to be passed on is not the thing itself (which is destroyed) but 'an inherently recallable image'. Her principal point is that the image is created as a *mental* resource through the disappearance of the object.

The phrase 'knowledge technology' is apt. My understanding is that the Malanggan image is created as a *resource*, an entity that can be reproduced again, often a generation hence, by the way it is recalled. So the knowledge in question is the

¹⁸ On this point Kuchler observes: 'names, as the carriers of a transcending body politic, are considered the property of the ancestral domain, are "found" and recollected through dreaming [prior to be reproduced again], to be validated and transferred as images' (1999: 66). The named image that is the subject of such rights and that can be exchanged is what kin own of one another.

¹⁹ The figures or effigies ('skins') appear as material objects in a particular form (which is their image), and once they have disappeared what is retained is the memory of this form as an abstract, mental image. Note that what is owned includes the capacity to turn such a memory into a realisation and make a new effigy (Kuchler 1992: 105, 107).

memory that holds the image in people's mind. Another way of putting this would be to say that 'knowledge' becomes a means to further reproduction (rather than an end in itself), the image being held in suspension, an outcome of what was seen in the original display when the rights were acquired or reconfirmed. Is it in this sense inert? The mind (memory) of the holder-owner houses it, yet the image as such is not affected by its location. It is perhaps not too extreme to suggest that being in the mind confers no further attributes or identity on the image: its mental or intellectual or intangible condition does not add anything. Although the image that is eventually reproduced will be negotiated from various anticipated claims on it, the holder-owner is not supposed to innovate on what he or she recalls. Indeed that is heavily frowned upon. The end or aim, I infer, is the eventual reproduction of the memory as an image, not as knowledge. On this argument, there is nothing particularly 'intellectual' about the fact that the image, like the words of a song or the design of an ornament, is held in the head, and -- following Kalinoe (forthcoming) -- nothing to be gained in separating out a class of intellectual property.

Channels of communication

Places such as Papua New Guinea are often stereotyped through the imaginary that takes as the antithesis to private property and IPR rights of a collective or communal nature. Yet multiple claims of the PNG kind described here could never be the equivalent of collective or communal interests in property-based regimes. Such regimes construct a sphere of social life which lies 'beyond' individual claims (although not beyond ownership: 'the commons' refers to common claims to resources). These rights may be claimed as inalienable, in opposition to the alienable (transactable) rights of property or commodity. By contrast, one does not have to specify the conditions of alienability or inalienability in a situation where anything is amenable to transaction.

It is exactly this kind of modulation with which Jacob Simet, Director of the PNG National Cultural Commission, has been concerned (Simet 2000, 2001) in relation to the Model Law on protection of cultural property in the Pacific.²⁰ This directive makes an excellent case for setting up protection mechanisms outside intellectual property regimes, but does so by insisting on the absolute claims of 'traditional owners'.²¹ These are identified as groups. In implying they are singular in nature,

²⁰ Under the auspices of UNESCO and WIPO: a Model Law for the Protection of Traditional Knowledge and Expressions of Culture in the Pacific Islands. At the time of Simet's observations in 2001 it was being discussed at various fora, including the South Pacific Commission (e.g. Kalinoe 2001). The Model Law envisages the concept of 'traditional knowledge' as covering all tradition-based innovations and creations, including literary, artistic and scientific works, along with names, symbols, information, and so forth.

²¹ Indigenous systems, the principal architect of the Model law (Puri 2002) observes, 'are driven by characteristics of trans-generational, non-materialistic, and non-exclusive or communal ownership of rights'

and by implication homogeneous, it addresses the problem of collective ownership in terms which remain familiar counterfactuals to Euro-American private-property thinking: 'community ownership', 'communal moral rights', 'cultural [as opposed to economic] rights'.²² The radical issue presented by the data from Papua New Guinea is how to accommodate *multiple* rights when they derive from incommensurable orders of relationship.

Simet observes of the Papua New Guinean Tolai from New Britain (2000: 78):

One idea which might easily form part of the development of a mechanism for protection of indigenous knowledge is the assumption that all traditional knowledge is communally owned. [In fact] ... people were very particular about acquisition, ownership, transfer, protection and use of knowledge. Only some kinds of knowledge belonged to the public domain, while the rest belonged to individuals and social groups.

And as he goes on to explain (Simet n.d.), Tolai persons and groups are enmeshed in diverse relations with one another. He produces a telling example. This is the way in which the signs of a clan's identity are distributed between its masks (*tubuan*) and the magic (*palawat*) which makes the masks effective vehicles of power. The mask is held by a clan member who acts as manager for the clan; the magic is held by a non-member, who acts as a custodian on behalf of the clan and deploys the magic on its behalf. In this matrilineal system the relevant non-members are 'children' born to male members of a clan. The procreative model is evident here, and is mirrored in rules of exogamy : a clan is not auto-fertile, but depends on other clans for its spouses. (Tolai land usage repeats the division, between the 'owners' of land and the 'custodians' of the history associated with it which is in the safe keeping of non-owner 'children'.) At any rate, clan members cannot use their own magic for themselves. They can only benefit by entering into transactions with others, and by bestowing benefit on others in turn.

which make IPR inappropriate. However the Model Law deliberately uses the term 'property' in accord with international usage, thus conferring a 'property right' on those who own traditional knowledge and expressions of culture (Part II: Rights of Traditional Owners) and seeks to identify the 'true owners' in each case; such owners in this usage include groups or communities.

²² The Model Law is based on an explicit objection to western forms of private property, and sees the Pacific counterpart as 'communal' property. Thus notes to the Model Law in draft form appropriately observe that 'in traditional societies rights over a work of art are generally distributed over several individuals or groups of individuals', but then interprets the relevant subject of traditional ownership as a group or community. Hence under 'collective ownership' it is noted that 'property rights in traditional knowledge and expressions of culture can vest only in a group, clan or community of Pacific Islanders' or 'ownership and control over the reproduction of works is vested in the group, clan or community'. Simet (2000) wishes to make a strong distinction between a 'community', as a kind of public domain in which certain types of knowledge circulate on a non-exclusive basis, and clans or groups, which assert exclusive claims. But, in his view, exclusive access does not mean that the clan or group has authority and control over all its property: aspects of *its* property may be under the control of *others* (non-members) who act as custodians or guardians of it.

Transactions (more enduring than contracts with strangers, more specific than the generalised obligations owed to kin) thereby create a form of 'multiple ownership'.²³ This concept has been developed by Simet himself (n.d., see above) in the course of enquiries with respect to the PNG National Cultural Commission's development of a national policy on the protection of cultural material.²⁴ The gaining and disposal of things does not extinguish the parties' mutual interest in the things or in one another: in 'owning' the flow of items we may say that they 'own', as an intangible thing, *the relationship between them*. When parties are involved in the transmission of knowledge or other intangible exercises of creativity, their part is not extinguished in the transfer of items. As a result, much 'indigenous' knowledge is both embedded *and* transactable. It means that there is no simple confrontation between communal versus individual rights: rather, specific interests are embedded in specific relations between persons. That things reify relations is often misunderstood as mercenary interest. Yet transactions may sustain a flow of intangible benefits such as 'life' or 'well being'. Persons identified as the origins of such benefits may be said to 'create' rather than produce them (the benefits) so they are embodied in (the health and life-chances of) persons, who are thus 'created' by others. As we have heard, benefits invariably have a particular social source (in other persons, other clans), and that source is part of the benefit (the fact that the item in question has come from them).²⁵ 'Payment' acknowledges the source, the form of the 'payment' ranging from a purchase to recompense or compensation.

In many PNG contexts the flow of payment releases the flow of life. The release is conditioned by appropriate relationships being in place; the payments ensure the flow continues. Hence the circulation of 'rights' over intangibles (wealth, magic) is often bound up with 'rights' over performance (exchange, ceremony). The accompanying transactions thus cut across the logic of both patenting [sustaining the

²³ Transactions tend to set up their own cycles of debts, whether or not they also cancel out or create debts in other spheres of social life. Insofar as transactions create what is transactable they can also determine the parties to the transaction. Thus 'groups' may 'emerge' at the time of the interchange itself, and have an identity as parties to the transaction.

²⁴ For a preliminary statement see Kalinoe & Simet 1999. The concept of multiple ownership emerged strongly from the Workshop on Intellectual and Cultural Property in the New Guinea Islands Region held in Rabaul in 2000; see Sykes with Simet 2000.

²⁵ So persons and resources may be seen as the 'combined' outcome of multiple sources of substance or benefit (see Hirsch 2001; chapter 7, Kalinoe & Leach 2000). A disquisition on Maori ideas of intellectual property points strongly to the idea that items of value gather strength as history accumulates around them (Garrity 1999: 1197). This is a well known phenomenon in the 'value' which accrues to exchange items in parts of PNG, such as the Massim, where such history is recorded in the names of previous holders of the valuables.

flow of ideas] and copyright [copying unique artistic expressions].²⁶ 'Ownership' in these circumstances is not straightforward. People may wish to facilitate *both* the protection of items that belong to groups, however defined, *and* the flow of exchanges that guarantees that what is of value circulates -- and continues in turn to receive the value that circulation (keeping up relationships) confers.

It is relationships that items render transactable and present conversions have past relationships built into them. By contrast, existing IPR categories point to multiple interests, but in a largely non-relational mode (after Bainbridge 1999). English copyright recognises joint authors. They own the copyright severally, as 'tenants-in-common', enjoying independent rights in the work that they may dispose of without referring to the other party. Joint authors thus operate as distinct individuals, each a full owner in relation to the part of the work that was theirs or to the whole if it were produced jointly. [Performance rights work somewhat differently.] We may note by way of comparison that while the several owners of the patent may also act as tenants-in-common, where an invention is the outcome of combined efforts then, by contrast with copyright, patent holders may be 'joint tenants'. Each is entitled to exploit the product individually but cannot dispose of his or her interest (rights) without permission from the others. In this sense, they are bound up in mutual relationship. A further potential for multiple ownership arises where the development of products depends on marshalling together elements that have been separately and individually patented by different companies (Heller & Eisenberg 1998). However, these types of 'multiple ownership' develop from a proliferation or fragmentation of individual privatisations, rather than from a need to reproduce relations.

In sum, what distinguishes the PNG regimes from those where IPR originated is that the reproduction of things -- including licenses for copying them -- carries with it the reproduction of relationships. Other people's generative power becomes the basis of relationships, which may or may not be ongoing. The examples I have drawn on offer a range of suggestions for thought. They began with the baseball cap and the innovation that could have been a matter of either personal or cultural style; the Reite people's interest in acquiring styles from others in the form of 'new' spirit songs then showed the power of payment, for what is transacted is the right not just to perform them but to pass them on; the Malangan briefly extended this transaction over a couple of generations, so that the 'thing' that purchase entitles one

²⁶ A view arrived at through a rather different route by Daes (e.g. 1997) and endorsed eloquently in the Maori case (Garrity 1999), and by the Deputy Director General of WIPO, Shozo Uemura, at the Geneva Roundtable on Intellectual Property and Traditional Knowledge in 1999.

to reproduce must be kept, owned, as a memory until the moment of its later appearance; while this last example, from Tolai, shows an institutionalised relationship between those who hold the right to reproduce and those who are the effective agents of reproduction. Indeed, their separation is a requirement. The difference between an academic and his or her university employee comes faintly to mind.

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ANNEX. A comment on Cultural Property

Some of the underlying assumptions attendant on the notion of cultural property are interesting in this context. I include here the idea that appropriation means something private is made out of what, if left to circulate unhindered, would circulate in a public domain. This is true both of Euro-American scientific authorship and of Euro-American debates over appropriations from 'culture'.

The term gift exchange²⁷ is given to a prestige-reward system through which scientists both ensure the circulation of information and gain recognition for doing so. Iconically, one gives publications to peers as a gift and receives credit as a counter-gift (Biagioli 2000: 85, quoting Hagstrom 1982). As in the Euro-American 'gift economy' (Cheal 1988), altruism towards the world at large often substitutes for reciprocity. But the flow is subject to interruption. People also engage in such strategies as delayed release of information and data-streams bound in ways difficult for others to build on (Hilgartner 2000). Intellectual property protection, in the form of demands from employers or sponsors, introduces a further dynamic -- indeed, Biagioli (2003) would argue that the logic of an intellectual property system is distinct from, even antithetical to, that of scientific reward.

There is more here than meets the eye. The individual supposedly shares findings with the scientific community at large so that knowledge taken out of a public domain is returned to it.²⁸ Biagioli sees this as a crucial distinction between the reward system and IPR. Unless scientific findings have circulated among co-researchers, they cannot be verified. Immediately in terms of personal reputation and ultimately in terms of the validity of data, the reason is that such findings are claimed to be truths about the world; they must become facts in the public domain.²⁹ Scientific findings build upon one another and, far from vaunting uniqueness, 'scientists buttress their new claims by connecting them as much as possible to the body of previous scientific literature' (2000: 88). Copyright by contrast is about original expression, a veritable distraction to truth claims, especially when

²⁷ Not the classic familiar to anthropologists, and definitively is not comparable to the gift side of the anthropologists' gift / commodity debate.

²⁸ 'While the production of value in liberal economy involves a movement between two complementary categories, from generic public domain to specific private property, in science the movement is within the same category (the public domain) and it goes from "unspecified" to "specified truth" ' (Biagioli 2000: 88-89).

²⁹ For a caustic critique of what (and when) in academia counts as public domain, see McSherry 2001 (chap. 2), and more generally Rose 1994: ch 5.

'originality' is read into 'origin', while patents are about utility, an irrelevancy as far as their factual status is concerned. IPR is inimical, in his view, to the workings of the scientific reward system. Contributions take many forms, but there is a sense of moral community with individuals each carrying responsibility for what they contribute. The rewards of IPR, primarily through patents, in a weak sense simply run alongside this gift-reward system ; in a strong sense they divide the community.

Many of the concerns of the international cultural property debate, as it affects 'indigenous peoples' and traditional cultures', echo the property / commons nexus found in Euro-American discourse on scientific knowledge. Crudely, knowledge belongs to (can be claimed by) communities near and far: the near one of scientists and the far one of a universal beneficiary, 'mankind'; both ordinarily lie beyond property. Similarly, cultural products belong both to their culture of origin and to world heritage, a kind of non-exclusive, distributable resource.³⁰ Resources of 'near' communities only become commodifiable if they are turned into items outsiders will value (tourist art, patentable inventions); but anything can be a potential resource for these 'far' ones. In either case, the debate is whether property rights assist their protection or should they be protected from property rights.

It does not take much to see the uses served industrial nations by the notion of open-access culture. Resources existing in some kind of public domain, if not terra nullius then outside prior property claims, are seemingly available to all (e.g. Brush 1999: 540). Beside this, the perceived autonomy of 'traditional culture' puts a certain political if not neo-colonial stamp on developing countries or ethnic minorities. Of course, few these days would admit to such extreme views. However, I suggest that they linger in the way that peoples with cultures (especially 'indigenous', 'third world', 'first nations' peoples) are imagined as collective or communal entities.

³⁰ In 2001 The General Conference of UNESCO adopted a Universal Declaration to Cultural Diversity, 'a comprehensive standard-setting instrument, elevating cultural diversity to the rank of "common heritage of humanity"', urging that 'While ensuring the free circulation of ideas and works, cultural policies must create conditions conducive to the production and dissemination of diversified cultural goods and services' -- it cannot just be left to 'market forces' (from press statement http://www.unesco.org/confgen/press_rel/021101_clt_diversity.shtml).

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