CONTESTING PHOTOGRAPHS (AND OTHER THINGS)

Within the past two decades, the ownership of the cultural artifacts of the world's indigenous societies became a new and cantankerous issue, turning the worlds of archivists and museum curators, along with individual collectors and dealers, completely upside down. These issues are now fought in the courtrooms, in the media, in protests, and by those pointing to ethical and economic dimensions as having equal weight in a manner really never before argued. In his new book, anthropologist Michael F. Brown seeks to "confront troubling moments in the history of [his] own profession and others, with special emphasis on insensitive use of texts, photographs, and sound recordings that never should have been subject to wide circulation" (p. xi). Brown seeks a middle ground in the conflicts, and he admirably achieves his goal of presenting the various challenges even if his hope for compromise does not always resonate. Who Owns Native Culture? (Cambridge: Harvard University Press, 2003) gives ample attention to archival issues, and this is certainly mandatory reading for any archivist or records professional who might wish to navigate among the rocky shoals of intellectual property of contested documents and artifacts, especially in an era of constantly shifting senses of the ethical and legal factors resonant in such matters.

Central to Brown's book is the startling idea that we are now witnessing the restriction of access to archives and artifacts, not because of the wishes of powerful governments seeking closure in the name of national defense and security but because of new sensibilities of cultural groups. "Those who traffic in cultural information—historians, folklorists, anthropologists, museum curators, archivists," writes Brown, "are learning to live with restrictions on access to cultural records formerly available for public use" (p. 7). The key element here is the phrase "formerly available for public use." As Brown later states, we now face the "difficulty of assessing the moral status of information collected in other eras" (p. 25). In the previous collecting of such material, there are "two distinct but interrelated problems. One is whether the circumstances under which the material was gathered meet the ethical standards of the researcher’s own time, ... Equally important is whether the information’s availability causes continuing harm" (p. 41).

Much of the book is built around case studies. Included among the cases are: (1) efforts by the Hopi Indians to have withdrawn from archives all photographs of their religious and other practices taken by the Rev. Heinrich (Henry) R. Voth in the early twentieth century; and (2) attempts by the Ojibwe to have the diaries, letters, and audio recordings of Frances Densmore restricted at the Library of Congress. Brown also considers: (3) Australian Aboriginal artists’ control of their art and images—on the grounds that reproductions violate sacred practices and traditions—through the copyrighting of the art; and (4) the Zia Indians’ contesting the use of one of their images in the New Mexico state flag—adopting a "moral-rights strategy" in trademarks rather than a copyright defense.

Brown also examines various groups striving to protect their intellectual property rights, drawing on the idea of "social capital," against ethnobotanists, like Richard Evans Schultes, searching for medicinal plants used by indigenous peoples. Other cases involve accommodating multiple use and interpretations of the Bighorn Medicine Wheel at Sheridan, Wyoming and Devils Tower and protecting Highmarsh Island in South Australia from developers because of archaeological sites associated with the Ngarrindjeri, an Aboriginal people, and Point Conception, California, and protests by local Native American and environmentalist groups against the construction of a natural gas terminal. Another case involves protecting the dwindling population of the Hudson Bay eider, a thick-bodied duck in parts of North America and Europe, and other threatened species, demonstrating the incorporation of "traditional ecological knowledge" possessed by indigenous peoples.

In considering these and other cases, Brown makes repeated references to a number of relatively recent federal laws, such as the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and the American Indian Religious Freedom Act of 1978, which pose special problems for archives and archivists. For example, NAGPRA has "helped to define information as the next frontier, raising questions about the future of the countless ethnographic photographs, field notebooks, diaries, and audio tapes held by the world’s libraries and museums" (p. 23).

Brown is a pragmatic optimist (my term, not his). He describes his position as being a "centrist" position, one where "thoughtful people coming together to negotiate workable solutions, however provisional and inelegant," is the best approach (p. 9). Brown deplores legislated policies, providing elegant argument that in these efforts come more difficulties for both indigenous peoples and those who want to study them (or to acquire their products). In a sense, much of his book is about the unintended consequences that occur when people,
who are often motivated by right and noble purposes, wind up exploiting innocent people and cultures.

Nevertheless, I have a gnawing sense that some of Brown’s approach is overly optimistic, where sensitivity to native culture overrides a greater social good. Indeed, Brown candidly states, "Reframed as a question, we should be asking not 'Who owns native culture?' but 'How can we promote respectful treatment of native cultures and indigenous forms of self-expression within mass societies?" (p. 10). This sounds so right, but it may be very, very difficult to apply in any meaningful sense.

Still, Brown does a good job of sifting through the difficulties of the ownership and use of native culture. Sometimes he displays a wry sense of humor, such as when he describes the NAGPRA interpretations as looking like the "pages of an instruction manual in postmodern politics" (p. 21). More often, Brown demonstrates sensitivity to the immense problems being generated about the archival and cultural materials of indigenous peoples. He worries about the restrictions of archival collections by putting the products of cultural practice into the hands of a few; "When esoteric knowledge is held by only a handful of anointed experts, entire bodies of tradition may be lost through a few unexpected deaths. In a surprising number of cases, information 'stolen' by inquisitive missionaries or anthropologists has saved indigenous communities from tragic cultural losses" (p. 31).

Finally, Brown seems to worry that the prospects of being able to create a "shared vision of the good society" may be slim indeed. In what is sure to be seen as a controversial viewpoint by many, Brown states, "I wish simply to point out the risks of taking too rigid a view of cultural ownership, especially when technological and social changes are making cultural boundaries ever harder to identify" (pp. 251–252). Who Owns Native Culture? is an extremely important and thoughtful book that is required reading for all archivists and records professionals.

Archivists and records managers are probably having a difficult time keeping up with the studies of and declarations about intellectual property. Intellectual property continues to be a troublesome issue in this digital age, as the constant parade of stories about the downloading of music CDs suggests. Peter Drahos and John Braithwaite, Information Feudalism: Who Owns the Knowledge Economy? (New York: The New Press, 2002) provides a balanced account about the dangers of restrictive views on intellectual property. Their book is "an argument against the domination of the intellectual property standard-setting process by a corporate elite that, for close to a century, has played the knowledge game with great social costs" (p. 15). The authors consider the issues of piracy, patents, trademarks, computer software, motion pictures, music, the role of universities, and trade policies using a variety of case studies—including the domination of pharmaceutical companies and the pirating of Western textbooks in Asia. Arguing that more than ever this is an era that needs public knowledge, Information Feudalism captures how this kind of knowledge is being strangled by the corporate takeover of intellectual property issues. As the authors suggest, "real power in the modern world . . . comes from sitting on committees that filter out other interested decision makers or parties from key decisions, but that in some way or another can be read as representing the excluded" (p. 72).

At one point in their book, the authors identify the university as the main source of innovation in intellectual property, not the corporate entities that seem to be taking over everything. For an interesting side study about the dilemma of the university and intellectual property, Coryne McSherry, Who Owns Academic Work? Battling for Control of Intellectual Property (Cambridge: Harvard University Press, 2001) provides a sobering assessment.

McSherry laments, "The university’s traditional service mission, once construed as an obligation to provide tools for public decision making, has been substantially redefined to mean the transfer of university research from academia to the market via patenting and licensing" (p. 2). One of the eerie aspects of her book is her characterization of how many faculty operate confidently as if their world has not changed and that they control what they do in their offices and their classrooms. McSherry’s book suggests that these formerly quiet, reflective spaces are now battlegrounds—and will likely remain so.