Intangible Cultural Heritage at the Cross-roads of Law, Technology and Business

From collections to connections . . .

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■ Technological innovations provide cultural heritage institutions (such as museums, libraries and archives) with the means to create new visitor experiences, to present and contextualize their exhibitions in new ways and to explore new business opportunities

■ IP, properly managed, holds the promise of developing sustainable cultural heritage programming and can assist in propelling cultural heritage institutions to financial success

■ How is IP relevant for cultural heritage institutions (M, L and A)?

■ Some basic IP principles

■ Leveraging cultural heritage for business opportunities

■ A few examples

■ Digitizing ICH: a checklist

■ Designing an IP management strategy: a simplified copyright audit

I. How is IP relevant for cultural heritage institutions?

■ Missions and Objectives of Museums, Libraries and Archives:

   ■ Preservation
   ■ Access
   ■ Education and research
   ■ Delight
   ■ Revenue generation: exploring business opportunities

   ■ Achieving these objectives will almost always involve use of IP

      ■ copying (incl. digitizing), adapting, publishing, providing access to, and communicating works and artifacts in collections, as well as derivative works;
      ■ use of names, logos, databases and other information associated with the museum or archive as an institution

   ■ IP implications of use of works depends on:

      ■ type of work used, and
      ■ intended use

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

■ Museums, Libraries and Archives:

■ Use other peoples' IP (through exceptions and licensing)

■ Create derivative works and manage their own IP (incl. through using other peoples' IP), and

■ Are responsible for safeguarding IP owners' IP-related interests (moral rights)

- **Kinds of IP rights and interests** that can exist in a museum/archival context:

  - IP in collections
    - Photographic images of artifacts and artworks (and in some cases the artifacts and artworks themselves);
    - Audio recordings and publications such as CDs
    - Audio-visual works
    - Multimedia productions
    - Publications, printed and electronic
    - Databases

  - IP in the museum/archive as institution
    - Museum's name and logo
    - Location and building
    - Titles of exhibitions

■ Contexts in which IP issues (such as copyright, trademarks, designs, unfair competition) can arise:

  ■ exhibitions and loans

  ■ educational activities

  ■ public photography, film and video

  ■ museum publications

  ■ conservation and preservation of works

  ■ museum employment and commissions

  ■ databases, multimedia products and going online

  ■ business opportunities

Some basic IP principles

- Ownership of the physical object vs. rights in the intellectual creativity embodied in it

- Objects vs. photographic images of the objects – a museum or archive most likely to hold IP rights in images of objects

- Objects and derivative works - a museum or archive most likely to hold IP rights in derivative works

- Works and rights in them are "layered" – eg. electronic image of a photo of an artwork.

- ■ "Intellectual property" rights and interests also include issues related to:

  - ■ "traditional knowledge" and
  - ■ "traditional cultural expressions"/"expressions of folklore"

- ■ TK and TCEs raise legal as well as ethical issues for museums and archives

  - ■ forthcoming WIPO publication "*Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives*" (WIPO, 2010)

II. Leveraging business opportunities

■ Production and distribution of tangible products

   ■ product licensing and branding, leveraging the museum's name, marks and reputation

   ■ eg. Lewis Chess Set, British Museum

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The Lewis Chess Set

These remarkable chess pieces were found in 1831 on the Isle of Lewis, Outer Hebrides. No exact account of the discovery remains, but they apparently came to light after the collapse of a sand-bank on the coast of the island revealed their hiding place to a passing islander. 93 pieces from the hoard are known today. They are all carved from walrus ivory and include a belt buckle and some plain draughtsmen as well as the 78 chessmen. They date from the mid to late 12th century, and the style of carving, especially the intricate interlocking animal and floral designs on the thrones of the seated figures, indicate that they are of Scandinavian workmanship; however, their exact origin is not certain and they may have been made in Britain by a craftsman skilled in this style of Viking art. The British Museum bought 67 of the chessmen towards the end of 1831.

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Image licensing

- markets: advertising, broadcasting, corporate, multimedia, publishing, educational

- no proven business model

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Institutions typically enter a site-wide license with ARTstor through their library. Access is granted through IP authentication. Site licenses to ARTstor allow unlimited number of simultaneous users to access the Digital Library, both on-site and remotely via username/password. In addition, institutions have access to a dedicated support team and on-line training.

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An alternative celebration of Indian independence.

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Machinery and Mechanisms

1) **Corner of the Garden at Montgeron**

Monet, Claude   Circa 1876
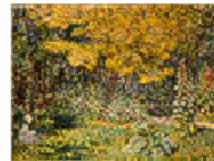
2) **Garden**

Monet, Claude
1876

3) **Garden in Bordighera, Impression of Morning**

Monet, Claude   1884
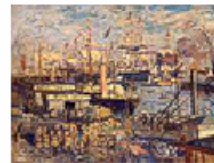
4) **Grand Quai at Havre**

Monet, Claude
1872

5) **Haystack at Giverny**

Monet, Claude   1886

6) **Meadows at Giverny**

Monet, Claude
1888
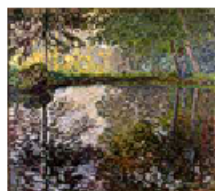
7) **Pond at Montgeron**

Monet, Claude   Circa 1876

8) **Poppy Field**

Monet, Claude
Circa 1890

yo, Japan

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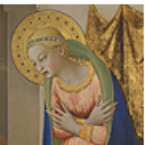New York Times
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Masterpieces

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Artemis

Self-portrait

The 3rd of May 1808 in Madrid

The Nobleman with his Hand on his Chest

The Cardinal

Descent from the Cross

Emperor Carlos V on Horseback

The Garden of Earthly Delights

Jacob's Dream

Inmaculada Concepción

The Annunciation

Crucifixion

Las Meninas

The Three Graces

We present a virtual tour of fourteen masterpieces from the Museo Nacional del Prado, displayed in ultra high resolution, enabling you to see details of the paintings that have never been seen before. Thanks to the high resolution of the digital images, you can view the whole painting or zoom in on a small fragment. Given the plethora of masterpieces housed at the Museum, choosing which works to include was no easy task but this selection represents the best of the collection.

III. Digitizing ICH: a checklist

- Setting objectives

  - Educational; public outreach; audience building; building online and Interactive capability; research and development; building Internet presence; economic benefits

- Identifying a suitable collection/content and implementing institutions

- Determining the target audience

- Establishing the necessary IT infrastructure

- Mapping out the applicable law and regulatory and institutional environment

- Developing the business model (be conservative!)

- **IP management:**

  - **Undertaking an IP audit/inventory**

  - **Formulating an IP policy and licensing strategy**

See WIPO/Pantalony, Guide for Museums

A copyright audit: simplified

- Is the production the result of human intellectual activity?

- Is the production protected as a copyright work?

  - If it is in the public domain, is it "traditional"?

- Is the copyright term still current?

- Who is the owner of the copyright?

- Is digitization permitted:

  - by the applicable copyright law? (exceptions)
  - by the owner of the copyright? (license)

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