



# Indigenous Knowledge, Intellectual Property, Libraries and Archives: Crises of Access, Control and Future Utility

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# Indigenous Knowledge, Intellectual Property, Libraries and Archives: Crises of Access, Control and Future Utility

JANE ANDERSON

In Australia, as in other places around the world, Indigenous people are raising important questions about the histories that have been produced from the archive and from libraries. Indigenous people are also seeking greater access to and, in certain cases, control over material that is located within the archive. This not only challenges rationalities of archival management (and I should say that I am using the term archive in a generic way to refer to both libraries and other archives) but also to the conception of the ‘public’ as well as legal conceptions of authorship and ownership. On one hand these struggles can be understood in the light of post-colonial politics. As the historical subjects of the archive reinterpret and re-inscribe material from within the archive, this affects how the archive is understood, both as a site and its effects on the social.

In this chapter, I discuss some of the reasons why there might be crises of access, control and ownership of Indigenous cultural material, the relationship of these issues to intellectual property law, and how to begin thinking through what the issues mean and how to navigate a pathway through them. I begin with an outline of my work and what I do in this area. From there, I move into some more philosophical questions about the making of archives and libraries – the spaces that they make possible and the relations of power that are inherent to their structure. I do this through the frame of liberal archives and colonial archives. In my view, this perspective is important because the processes of documenting Indigenous knowledge are not isolated to the past but are ongoing activities for a variety of reasons and across a variety of communities and academic disciplines. Whilst Indigenous people and communities are much more involved in these processes than in the past, there are still a number of issues about collecting and documenting Indigenous knowledge and a range of intellectual property implications. I conclude with a discussion about the work I am conducting with the Galiwin’ku Indigenous Knowledge Centre. This involves the development of a very specific community intellectual property agreement that responds to quite specific needs of the Knowledge Centre. The prolific nature of protocols in this area points to their power as a strategic tool. As the Galiwin’ku example will show, they have the potential to forge new relationships between the

community and researchers, archives, libraries and other cultural institutions. They begin to establish a benchmark for responsible obligations between parties that move around some of the more tedious constraints of copyright law.

## Issues of Access and Ownership: The Importance of Intellectual Property

At the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), I work on an intellectual property (IP) and Indigenous knowledge project, which came about because there were serious issues of ownership with the collection at AIATSIS. AIATSIS holds the world's largest collection of Australian Indigenous material. Some of the materials in the collection have issues that generally revolve around authorship and ownership and which have led us to investigate what these mean, how to work through and solve any problems so that AIATSIS can deliver access to that material to Indigenous people and communities. Resolving issues involves wading through a whole historical milieu: what has happened in the past, how material has come to the Institute, who has deposited it, who legally has copyright rights and, significantly, who has had the power to say who does get access. All these questions come to bear on determinations about how and what to do in relation to such materials. So, clearly, intellectual property is a huge kettle of fish, especially in an institution that has such a wide range of Indigenous cultural material. Indeed for AIATSIS and cultural institutions more generally, the road seems to be paved with copyright problems and complications.

The project looks practically at some instances of material that causes difficulty viz, material that has difficult depositors, material that has deceased depositors, and depositors fearful of material that perhaps should never have been collected in the first place. To date these people control access because they are, in most cases, the copyright owners, and if they say, Indigenous people, regardless of whether they are family members or related to the original people in the recordings can be denied access then there is very little power that AIATSIS has over the legal rights of the copyright owners of the material. I should put a caveat here that this is not the majority of material at AIATSIS but because it affects how AIATSIS delivers access now and in the future to the material, these are issues that are in need of attention.

What kind of materials are we talking about? For the most part, the materials that are particularly difficult is photographs, sound recordings and films; or for copyright law, subject matter other than works.<sup>1</sup> I find this interesting because of the importance of the visual image and aural mediums. They hold an immediacy of representation, for instance, representation of place, of ceremony, of knowledge. That it is this material that raises quite intense questions of authorship and ownership is significant too because in the history of copyright law these have been the types of materials that have posed challenges for copyright law.<sup>2</sup> For copyright law always has struggled with determining creative endeavour, and hence justifying ownership of this material.<sup>3</sup> A reflection upon

these types of Indigenous cultural material should alert us to the often hidden histories of instability in narratives of the genesis of intellectual property law.<sup>4</sup>

It is significant that intellectual property now features popularly in our society and is much more in the public gaze than it was ten years ago.<sup>5</sup> However, AIATSIS did recognise, as early as 1972, that copyright was going to be an important issue.<sup>6</sup> Whilst it was not explicitly written into contracts and agreements of work with people who were recording Indigenous cultural material (and this is now certainly a problem), there was an implicit recognition that this was going to be an issue and now in 2004 we are working through what those issues are and how to deal with them both in their historical and contemporary manifestations.

Since Indigenous people have begun to know about IP, they have also started questioning who the legitimate rights holders are and why.<sup>7</sup> As the recording of Indigenous knowledge and information has predominately been conducted by non-Indigenous people, the making of the material into tangible form, photographs, sound recordings, films etc. means that ownership tends to lie with the non-Indigenous researcher or creator of the work.<sup>8</sup> The advent of digital technology complicates processes of ownership.<sup>9</sup> As IP law grapples with the demands of digital technology, so too does it compound some of the problems with Indigenous cultural material. For example, just because some material is in the public domain and even out of copyright protection, doesn't necessarily mean that it is appropriate to circulate freely on the web with little or no restriction or moderation. So ownership of material is an important concern and resolving this issue, with the recognition of Indigenous rights – not just legal rights – lies at the heart of access, control and future utility.

## The Role of Archives and Libraries: Some Historical and Philosophical Considerations

How do archives and libraries begin dealing with this issue? To address this, I want to reflect upon some of the more philosophical questions about what role archives and libraries play in managing knowledge collected over historical periods, and indeed the complexity that this brings to bear on dealing with IP issues in contexts like knowledge centres.

Jacques Derrida begins his influential essay *Archive Fever* by tracing the etymology or archive of the term. Whilst Derrida's work spurred a rethinking of the archival project which has generated its own wealth of literature, his etymological rendering remains insightful about the extent of power relations involved in the archive as a physical structure as well as those implicated in the processes of governing access.

The meaning of archive, its only meaning, comes to it from the Greek *arkeion*: initially a house, a domicile, an address, the residence of the superior magistrates, the archons, those who commanded. The citizens who thus held and signified political power were considered to possess the right to make or to represent the law. On account of their

publicly recognized authority, it is their home, in that place which is their house (private house, family house or employees house) that official documents are filed. The archons are first of all the documents guardians. They do not only ensure the physical security of what is deposited and of the substrate. They are also accorded the hermeneutic weight and competence. They have the power to interpret the archives. Entrusted to such archons, these documents in effect speak the law: they recall the law and call on or impose the law. To be guarded thus, in the jurisdiction of this speaking the law, they needed at once a guardian and a localization.<sup>10</sup>

## The Liberal Archive

Patrick Joyce has developed a cogent argument for the archive as a political technology of liberal governmentality.<sup>11</sup> By this he means that the archive provides an intrinsic instrument in helping to render readings of social life and social conditions – readings that are intrinsic to how liberal governments conceptualise subjects and their needs and then develop particular strategies to achieve these ends. It provides a space for the different narratives between the national and the social to be interpreted. Data amassed about a particular subject or experience in daily life, went on to inform the way in which the subject could be managed through targeted governmental and bureaucratic programs.

Of particular interest for Joyce is the emergence of the ‘public’ archive in Britain. He locates it as the Reading Room in the British Museum in 1753 and the Public Record Office in 1838 some 80 years later as offering a fuller rendering of the ‘public’. The Library Act of 1850 instituted the first democratic archive, and we should not discount the role of law – through legislation – in enabling this new free space of interpretation. Indeed, the very idea of the free library was central to the new vocabulary of the social that was engineered through the archive, especially the meanings of ‘public’.<sup>12</sup> Whilst both the British Museum and the Public Record Office were theoretically ‘public’, access to both was limited, and this was not only in what was accessible, but the extent that freedom of the public was also limited or contained by the very structure and architecture of the buildings.

Joyce highlights the historical development of an archive that, though guarded, is a public space. With the generation of the public space as a relatively recent phenomenon, it is worth reflecting how it is also intrinsically tied to the development of liberalism, and the autonomous liberal subject. I am fascinated by this notion of the archive as a public space and the freedom of the individual to access that space. In particular, I am interested in the range of political powers that are engaged when, for instance, the public space of the archive is disrupted by explicit, as opposed to more subtle, forms of restriction. For the prior consignment of documents to the archives limits what visitors can find in it, and in cases where the archive is tightly constructed to enhance the reputation of an author or to cast an event in a way that supports a partisan cause, the archive can be said to embody an intentional design. Archives are not always coherent, and they may contain a surplus of materials which enable adversary readings.<sup>13</sup>

It is here that the work of Thomas Osborne is useful. Osborne helps us in our understanding of the archive by positioning the archive as a source of both ethical and epistemological credibility.<sup>14</sup> To understand how such a location for the archive might be conceived he looks to notions of authenticity, identity and evidence and the way that they relate to ideas of representation, interpretation and reason. To think of the archive in such a way allows access to ideal and literal conceptions. That is to say that by tracing the place of the archive, this allows a very particular mode of inquiry for understanding the cultural and historical rationale that made possible its existence. More than this it creates a way of thinking about the archive in differing political systems and drawing resonances in the process of understanding the activities of the archive. This approach gives us a system to understand the political rationales and effects that can be brought to bear on the archive and its contents.

Using Karl Popper's sense of the term 'objective knowledge', Osborne likens the analytical space created by the very existence of the archive to the space that the laboratory creates for the natural scientist.<sup>15</sup> This analogy encourages reflection about the extent that the 'things' that are housed, recorded, administrated or even accessed in the archive are also objects that belong to a third world beyond both the physical world of things and the knowing subject or subjective experience. Here Osborne suggests that we may also understand the world of the archives existence as autonomous. That is to say that in this 'third world' what is of particular importance is the possibility of the archive producing its own effects.<sup>16</sup>

Not being completely satisfied with this understanding of the archive as 'autonomous', it is perhaps more usefully conceptualised as a centre for interpretation.<sup>17</sup> In providing a way of relating to the past, significantly a predominately written past, these places are not innocuous or neutral holders of material but are part of socio-political practices. Although archives continue to be valuable facilities, the practices and struggles associated with composing, assembling and controlling access to documents plays a substantive role in history as well as the scholarly reconstruction of history.<sup>18</sup>

The relationship between the archive and its constituents (the public) raises a range of questions. In thinking about who the public for an archive might be, Osborne notes that 'the archive is there to serve memory, to be useful – but its ultimate ends are necessarily indeterminate. Material is deposited for many purposes, but one of its potentialities is that it waits a constituency or public whose limits are of a necessity unknown.'<sup>19</sup> Just as a text exists because there is a reader to give it meaning so an archive exists because there is a user to give it meaning.<sup>20</sup>

So my interest here turns from the politics of the liberal archive to a more sustained attention how meaning is conveyed to a variety of users. In the changing social and historical contexts of Australia, it seems worthwhile asking what happens to the meaning produced by the archive when the users of the archive shift focus, and what happens when new user groups are constituted, users who have not only been historically excluded

from the ‘public’ space but whose lives and histories informed and consequently formed a corpus of material contained within the walls of the archive?

These questions provide a point of departure to turn to a discussion of the colonial archive and its role in the production of knowledge about colonial subjects.

## The Colonial Archive

We can appreciate that archives are as much products of historical struggle as they are primary sources for writing histories.<sup>21</sup> Nicholas Dirks explores this nexus in his seminal work on the archival production of caste in India.<sup>22</sup> For Dirks, the interest in the archive is not what it constitutes as a space, but what meanings have been made and how, in the particular colonial context of India, the interpretation and development of meaning came to hold an immensely influential position in the development of categories of social organisation.

Dirks work weaves an argument about the ways in which Indian knowledges were recorded and collected and the status they assumed in the management of colonial relations. He makes the observation that early colonial historiographies in British India were dependent upon native informants who were later written out of those histories.<sup>23</sup> Inevitably this draws attention to the relationship between archiving, experts and knowledge production – the role of the collector/author occupying a central locus within this relationship.<sup>24</sup>

Ostensibly Dirks explores the extent that India became an ethnographic state, where anthropology supplanted history as the principal colonial modality of knowledge. For instance anthropology identified as a subject a ‘native’ population that was to be ruled. ‘Colonial history conceded to anthropology the study of a historical subject that has not yet become modern. Anthropology became the history of those without history. It was caste that articulated this legacy of tradition, standing in place of the historical mindedness that was seen to be absent from Indian sensibilities.’<sup>25</sup> The colonial archive was about knowledge, and Dirks goes on to argue persuasively that the colonial knowledge that the archive produced was more powerful than the colonial state ever was. This was because it informed social categories that were then acted upon by the colonial state. The colonial documentation project encoded a certain anxiety that rule was always dependent upon knowledge, even as it performed that rule through the gathering and application of knowledge.<sup>26</sup> In this sense, the colonial archive was a central place for subject making.

Following from Dirks, this leads Stoler – with her own interest in the archival records of the Dutch East Indies Company in rendering readings of colonial desire – to posit that the archive was the supreme technology of the late nineteenth century imperial state; a repository of coded beliefs that clustered (and bore witness to) connections between secrecy, the law and power.<sup>27</sup> This leaves the question: to what extent can we understand archives as epistemological experiments and colonial archives as cross-

sections of contested knowledge? For example, what constitutes the archive, what form it takes, and what systems of classification signal at specific times, are the very substance of colonial politics.<sup>28</sup> ‘Colonial archives were both sites of the imaginary and institutions that fashioned histories as they concealed, revealed and reproduced the power of the state.’<sup>29</sup> As Derrida’s discussion of the etymology of the word archive illustrates, power and control have been fundamental to the term and its effects within liberal and colonial contexts.

Different cases allow us to recognise that these struggles are not all of one kind, and that they are not the expression of a single ‘archic’ or ‘patriarchic’ function. Instead they are local materialisations of history or, rather, historical materialisations of the records from which histories are (re)constructed. Consider, for example, in an Australian context, the particular political moments that might have contributed to a change in the function of the archive. I am specifically thinking about what have been the political influences that have rendered the Australian colonial archive more open to Indigenous people as a different set of users. Has the challenge of land rights and native title and stolen generation played a role in repurposing archives? Have these historical moments provided the catalyst for the development of ‘postcolonial’ archives?

If, as Stoler and Dirks suggest, archives hold a powerful position as political technologies in how we make meaning of the past, of subjects, of social organisation and representations of relations between ourselves, then are the political shifts that re-imagine relationships with the archive relevant to this discussion? Until now this chapter has been sketching a frame for understanding the archive as a place that is influenced by and distributes a myriad of relations between knowledge and power. What then might happen as there are shifts in the colonial polity, and the people traditionally subjected to archives, gain a recognised voice and question not only status within the archive but the authority of the archive as a centre of interpretation in contrast to the localised context where the represented knowledge is expected to reside?

If there is a critique to level against these conceptualisations of archives, it is that they are presumed to be quite autonomous and coherent – that they function rationally, and their intended purposes lead to equally predictable outcomes. It is important to remember the disorder and inevitable messiness within archives and libraries. It is fine to construct an image of an archive, including its purpose and function. However, the archive does not function without its internal machinations or without individuals. For when problems arise they are not necessarily easy to identify and isolate, and this returns me to problems of intellectual property. In this sense, problems of IP do not function in isolation to other issues that a library or archive might face. They are intricately wrapped around other issues, historically driven or manifest in the contemporary, and teasing them apart for remedy is often quite difficult. How, for example, are we to deal with problems of intellectual property and Indigenous rights of access, control and ownership of material if, quite simply, the institution does not know what it is that it holds? These



questions run seamlessly into problems of cataloguing, of the will to know what is in a collection, and a desire to build new relationships with people who have historically been subjects of the archive through extensive documentation processes.

Unfortunately these questions do not always have easy answers. The archives and libraries privilege a position of authorship, which the archive not only upholds but also distributes more broadly as if also caught in its own ‘author-function’. For the archive is sustained within society, not only by what it produces but also through what networks of authority are relied upon.

So legal authority becomes consolidated in the archive through categories of authorship and ownership – categories that are not only socially produced but are authorised by legal narratives that, in turn, strategically deploy such narratives for the purposes of identifying rights of property.

When the colonial archive admitted the new ‘Indigenous public’, authorship of history and colonial experience began shifting. There was, and remains, a challenge to the authority of the colonial archive to speak for and about Indigenous people. Notwithstanding the ambiguities of colonial relations, it is fair to say that when a majority of material that documents Indigenous people’s lives and traditions is owned legally by non-Indigenous people, certain tensions arise. And these tensions find themselves being played out over access and control – authorship and ownership – the key sites that feed into archival authority.

## Galiwin’ku Indigenous Knowledge Centre

I now turn to discuss the development of some practical strategies to engage with these issues in the work being done at the Galiwin’ku Indigenous Knowledge Centre, Northern Territory, where I have been working with Joe Neparrŋa Gumbula, Richard Gandhuwuy Gurrawurra, Matthew Gaykamanuguy, Ruth Almakarra Garrawurra and Jessica De Lary Healy.<sup>30</sup> The Indigenous Knowledge Centre (IKC) functions to record and document current cultural practices as well as provide a place for the return of important historical recordings to the community. The kinds of problems of ownership and authorship that we engage with at AIATSIS tend to be replicated in Indigenous Knowledge Centres and other cultural centres that are being developed as cultural material is returned to communities. These problems arise because ‘returned material’ is still not owned by the community and if communities want to make copies of it or put it on the web, they must engage with all these problems of intellectual property or, to be more precise, copyright and the dilemmas of licensing in the digital environment. For example, the GIKC has hundreds and hundreds of photographs – some old and some more contemporary photographs – and whilst there are some very simple ways of dealing with some of the issues, the way in which they are tied to issues of funding, issues of training, and what the actual purpose of the space is become quite interconnected and complicate the path to resolution.

To work through the ownership problems at GIKC, we needed to develop a particular strategy, quite specific to the community. Whilst the legal questions are simple in many respects about who does own a particular item, they are complicated in the process of returning them to the community for use by the community. Questions arise: how are you allowed to reproduce, for example, a particular photograph, how do you put it into a computer, who then owns it, how do you document these processes, who do you contact if you would like to use it later on, or could you get a transfer of ownership of the photograph so you could use it whenever you wanted to? The problem with older material is that often the copyright owners are unable to be contacted: we have no idea of where they are, or perhaps who they are or what they think about use of their material. This is always a significant problem and points to the responsibility of researchers to maintain a particular ethical standard in how they do document Indigenous knowledge and maintain their continuity with a community they have worked with over a period of time.

We decided at Galiwin'ku that we would develop quite a specific community intellectual property protocol and that this would emanate from Galiwin'ku; it would not emanate from larger organisations and then be imposed on Galiwin'ku. The protocol being developed is quite distinctly a Galiwin'ku document and it incorporates both Yolŋu understandings of knowledge management as well as the intellectual property issues. It is starting to be a pathway in terms of dealing with issues that include both these legal strategies and also the Yolŋu strategies of knowledge management. It is important to note that we are talking about *Garma* material; we are not talking about restricted material because the Yolŋu system manages that fine and there is no need to mess around with those materials.

We are looking at material that is produced, for example, when researchers come in and take photos of the community. We want to develop something so that researchers have some responsibility and obligation to leave some of those photographs with the GIKC so that the community knows that they have them and they can show their children – the purpose is not complex. In developing the protocol, we are seeking to bridge a gap between Yolŋu needs and systems and these quite rational systems of law and ownership and authorship and to re-jig them – dance around copyright, if you will – so that the community does have ownership, does have rights that are recognised. When people do come into the community they are under an obligation to respect those rights.

This is creating a space for Galiwin'ku IKC to build different relationships with researchers and institutions. If GIKC has its own document to give to a researcher who comes into the community, the researcher knows that they have an obligation to treat the material that they record in a particular way in accordance with the site-specific issues. Similarly when Joe Gumbula goes down to deal with different libraries and archives, for example, the Donald Thomson collection at Museum Victoria, or the University of Melbourne, he has something that confirms to them that the GIKC has ideas about intellectual property issues, as well. This is a significant development, as there is

reluctance on the part of organisations to hand back materials because of copyright questions. However, if the GIKC is being proactive in how its dealing with these issues, then the institutions can see that there is room for a new and different relationship to be built between institutions and communities. This is a process, not without its flaws, but nevertheless a practical strategy that allows communities to have more rights to material when historically they have had none. The community is strengthened in the process and at the same time it raises the bar in relation to how institutions do deal with Indigenous Knowledge Centres. It is important and timely that these new relationships be recognised and developed through such processes. There is so much cultural material held in institutions. A lot of it is contained in collections that have not been documented. Not only do some institutions not even know what their collections hold but some fear documenting what those collections hold because of the intellectual property implications once they do know what they hold.

The development of a site-specific protocol to assist Galiwin'ku to build on the material that it already has and also know what it can use and how they can use it without always having to go to the copyright owner has actually, given that it is in quite a remote location, put power back into the GIKC as a point of contact. People can go to the GIKC and find out about material rather than relying on an institution like AIATSIS who does not necessarily have that contact information to start with. The development and use of a Galiwin'ku protocol has helped to build these new relationships and push them forward by dancing around intellectual property, which is an incredibly complex field, as the profession knows. Using such a protocol can also contribute to a change in mindsets about what we expect intellectual property to do.

Intellectual property is a tool of control so it can work quite well to recognise rights and to abridge them in many ways. Of course it is about property as well and we have to ask questions about how we are making knowledge into property: Is that useful? Can it provide some sort of leverage to protect knowledge that otherwise wouldn't be protected? And I think in certain instances it can provide a useful tool of leverage. The flipside to intellectual property, of course, is it is restrictive. It restricts and if somebody else has IP rights they restrict others' use of it. These are the fundamental tenets of IP. AIATSIS has some of these problems, as do other institutions in Australia. As well, overseas institutions like the Smithsonian have these issues and nobody is clear on how to deal with them. What the projects at AIATSIS and Galiwin'ku Indigenous Knowledge Centre have highlighted is that the only way to work through the issues is to get them out on the table and make a start.

## Notes

- 1 *Copyright Act 1968* (Cth) Part IV
- 2 For instance see the example of photography: B Edelman *Ownership of the Image: Elements for a Marxist Theory of Law* (trans by E Kingdom) Routledge and Keegan Paul London 1979; J Gaines *Contested Culture: The Image, the Voice and the Law* The University of North Carolina Press Chapel Hill 1991 p15; K Bowrey 'Copyright, Photography and Computer Works: The Fiction of Original Expression' *UNSW Law Journal* vol 18 no 2 1995 p278. For another discussion of photography as 'difficult' subject matter, see K Garnett 'Copyright in Photographs' *European Intellectual Property Review* vol 5 2000 p229; B Edelman 1979
- 3 See for instance B Sherman and L Bently *The Making of Modern Intellectual Property: The British Experience 1760-1911* Cambridge University Press Cambridge 1999; P Drahos *A Philosophy of Intellectual Property* Dartmouth Press Sydney 1996; M Rose, 'The Author as Proprietor: *Donaldson v Becket* and the Genealogy of Modern Authorship' in B Sherman and A Strowel (eds) *Of Authors and Origins: Essays in Copyright Law* Clarendon Press London 1994
- 4 See J Anderson *Law, Knowledge and Culture: The Production of Indigenous Knowledge in Intellectual Property Law* Edward Elgar Press (forthcoming 2006)
- 5 Much of this commentary has involved an evaluation of the role of intellectual property laws in facilitating commodification and the development of new markets. As part of the developing discourse, attention has also been directed to the implicit cultural elements (and hence cultural prejudices) of intellectual property law, wherein cultural products are increasingly circulating as commodities within networks of private property relations. See for instance: P Drahos 'Capitalism, Efficiency and Self-Ownership' *Australian Journal of Legal Philosophy* vol 28 2003 p215; J Boyle *Shamans, Software and Spleens: Law and the Construction of the Information Society* Harvard University Press Cambridge MA 1996; L Lessig *The Future of Ideas: The Fate of the Commons in an Interconnected World* Random House New York 2001; D E Long 'The Impact of Foreign Investment on Indigenous Culture: An Intellectual Property Perspective' *NCJ Int'l L & Com Reg* vol 23 1998 p229; M Ryan *Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property* Brookings Institution Press Washington DC 1998; S Sell 'Industry Strategies for Intellectual Property and Trade: The Quest for TRIPS and post-TRIPS Strategies' *Cardozo Journal of International and Comparative Law* vol 10 2002 p79; C May *A Global Political Economy of Intellectual Property Rights: The New Enclosure?* Routledge London 2000; R Coombe *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law* Duke University Press Durham 1998; K Aoki 'Neocolonialism, Anticommons Property and Biopiracy in the (not-so-brave) New World Order of International Intellectual Property Protection' *Ind J Global Leg Stud* vol 6 1998 p11
- 6 Early letters between Principals at AIATSIS explicitly mention copyright and recommend the establishment of a copyright committee. Letters on file at AIATSIS and with author
- 7 The copyright and Aboriginal art cases in Australia increased awareness about these issues in significant ways. See: *Yanggarny Wunungmurra v Peter Stipes* 1983 Federal Court, unreported; *Bulun Bulun v Nejlam Pty Ltd* (unreported Federal Court of Australia Olney J 29 March 1989); *Yumbulul v Reserve Bank of Australia* 1991 21 IPR 481; *Milpururu*

- v Indofurn Pty Ltd* 1994 54 FCR 240; *Bulun Bulun v R and T Textiles Pty Ltd* 1998 86 FCR 244; *Bulurru Australia Pty Ltd v Oliver* 2000 49 IPR 384. See also C Golvan, *Aboriginal Art and Copyright – An Overview and Commentary concerning Recent Developments*, 2001, at <http://www.golvanarts.com.au/copyright.html>
- 8 See J Anderson and G Koch ‘The Politics of Context: Issues for Law, Researchers and the Creation of Databases’ in L Barwick A Marett and J Simpson (eds) *Researchers, Communities, Institutions, Sound Recordings* University of Sydney Sydney 2004
- 9 See K Bowrey *Law and Internet Cultures* Cambridge University Press Cambridge 2005; J Litman *Digital Copyright* Prometheus Books Amherst NY 2001; J Ginsburg ‘Copyright and Control over New Technologies’ *Columbia Law Review* vol 26 no101 2001 pp1613-1647
- 10 J Derrida *Archive Fever: A Freudian Impression* Chicago University Press Chicago 1996
- 11 P Joyce ‘The Politics of the Liberal Archive’ *History of the Human Sciences* vol 12 no 2 1999 p35
- 12 *Ibid* p39
- 13 M Lynch ‘Archives in Formation: Privileged Spaces, Popular Archives and Paper Trails’ *History of the Human Sciences* vol 12 no 2 1999 pp65-79
- 14 T Osborne ‘The Ordinarity of the Archive’ *History of the Human Sciences* vol 12 no 2 1999, p51
- 15 *Ibid* p52
- 16 *Ibid* p52
- 17 *Ibid*
- 18 Lynch p67
- 19 Osborne p55
- 20 *Ibid*
- 21 Lynch p67
- 22 N Dirks *Castes of Mind: Colonialism and the Making of Modern India* Princeton University Press Princeton 2001
- 23 *Ibid* p85; see also A Stoler ‘Colonial Archives and the Arts of Governance’ *Archival Science* vol 2 no 1-2 p96. For a change in the direction of the narrative see P Chatterjee *A Princely Imposter: The Kumar of Bhawal and the Secret History of Indian Nationalism* Princetown University Press NJ 2002
- 24 Walter Benjamin’s notes on the collector remain ever useful. See W Benjamin *The Arcades Project* (trans R Tiedermann) Bleknap Press Cambridge MA 1999
- 25 P Joyce *The Rule of Freedom: Liberalism and the Modern City* Verso London 2003 p246
- 26 Dirks p123
- 27 Stoler p95
- 28 *Ibid* p92
- 29 *Ibid* p97
- 30 I would like to take the opportunity to thank Jessica De Largy Healy for facilitating this contact and for the productive conversations that followed.