Problems in Managing Cultural Resources : Resource Sharing Protecting Intellectual Properties and Ethical Consideration

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Problems in Managing Cultural Resources: Resource Sharing, Protecting Intellectual Properties and Ethical Consideration

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1 What is a cultural resource?

The National Museum of Ethnology (NME), Japan, was established in 1974 with the following three missions:

(1) Ethnological and anthropological research.

(2) Collection, conservation of ethnographical materials and information.

(3) Public Exhibition.

During these past forty years, the paradigm in ethnology or cultural anthropology has changed dramatically. As is well known, ethnology or cultural anthropology had originated from the European explorations to undeveloped countries like Africa, Oceania, North and South Americas and Asia, where European academism discovered many other cultures unfamiliar to European people. As with the process of colonization of these undeveloped areas by European countries, experiences and knowledge obtained from ethnological field researches had been utilized to govern those colonized areas by adjusting the European political and social rules to the local rules, thus enabling governance of the areas with less stress imposed on the local people. Thus, ethnology or cultural anthropology has several elements based on European-centrism. The movements of reflecting such a situation arose around the 1960s, and various discussions were made, as typically exemplified by the book "Writing Culture: the Poetics and Politics of Ethnography" edited by James Clifford and George E. Marcus published in 1986.

In this book, the authors argued the following questions:

(1) Is it a true assumption that the ethnography described or collected by a researcher is objective or not?

(2) Could the relation between the described-side and describing-side be viewed symmetrically? Is the latter sometimes dominant over the former in political, economic, and even cultural phases?

(3) Are the cultural resources collected and described by the dominant side sometimes exclusively possessed by that side, not to mention "cultural deprivation"?

Then they proposed to "deconstruct" the existent authorities and distinction between self and others, then to set the ethnographical text into open discussions.

Following their discussion, the first thing we notice is that the term "ethnography" has an implication of European-centrism, because its subpart of
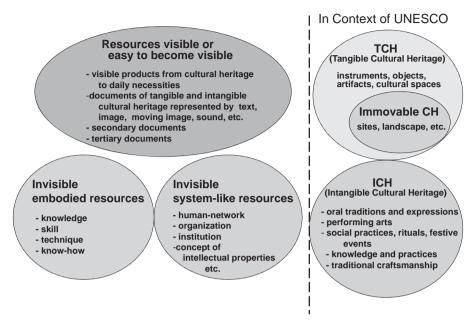
Figure 1 Coverage of Cultural Resources.

"graphy" means a "written" document from the European side, which indicates one-way thinking only from Europeans to non-European areas. Therefore, we think it better to rename the term "Ethnographical Materials" as "Cultural Resources," because the term "cultural resources" implies the following features.

(1) They are primarily owned by site people.

(2) They are resources for understanding one's own culture as well as other culture.

(3) They are also a kind of "global commons" toward the "treasury of human wisdom."

Here, we define the coverage of cultural resources in very wide terms, as shown in figure 1, where visible resources and invisible resources correlate well to the UNESCO context of TCH (Tangible Cultural Heritage) and ICH (Intangible Cultural Heritage). We intend to manage as wide a range of categories of resources as possible.

2 Iterative sharing and co-creation of cultural resources

Based on the discussion raised in "Writing Culture," the next idea we would like to introduce when managing cultural resources is the concept of "forum" type collaboration among people from three sides, namely, site people who are the owners of, ethnological researchers who are the developers of, and the third party people who are the users of, the cultural resources. Here the three sides are set up to equally collaborate on excavating, developing and upgrading the cultural
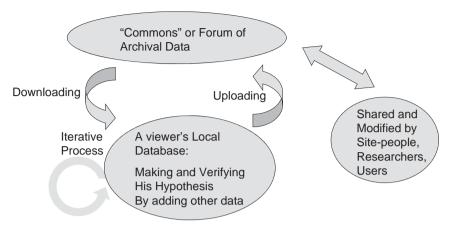
Figure 2 Forum-type Data Sharing with Iteration: among researchers, site-people, users.

resources. As shown in figure 2, the forum may work as "commons" for sharing data as well as locally developed databases among the members of the forum.

By introducing forum type collaboration, the following effects are obtained:

(1) Shift from exclusive control by specialists to sharing and joint works among people from the three sides.

(2) Change of research ethics; change from deprivation of cultural resources to feeding-back to the original site and sharing of the cultural resources.

(3) Upgrading information through sharing; resultant from sharing and modifying information among people on the three sides.

(4) Cultural restoration at the sites; sometimes cultural elements that have already disappeared or are nearly extinct in the original site may be reused by the site people for inheriting and reviving the culture, or creating a new culture based on them.

(5) Shift from construction of intellectual databases to discovery of human wisdom; sharing of the cultural resources submitted from every side leads to the accumulation of a wider-range of human wisdom that may help to gain insight into human survival in a crucial global situation.

(6) The effects of fusion of the humanities and natural sciences; cultural resources can be applied to humanities researches as well as natural sciences researches, thus helping to promote reciprocal researches on both sides.

3 Requirements for collaborative management of cultural resources

Realization of forum type collaboration requires solutions for the following problems.

(1) Needs of literacy in cultural resources management; Whenever managing

cultural resources, consideration on balance between sharing and protection is required.

(2) Needs of archivists specializing in each specific area; Cultural resources are related to specific research fields like ethnology, archaeology, and history, thus knowledge and skill are also required for handling and estimating individual materials or documents in the most appropriate manner corresponding to each specialty.

(3) Sustainable conservation of both tangible and intangible cultural resources; Once cultural resources have been acquired, museums or institutions are supposed to maintain and conserve the materials and documents for a long period of time. Especially if documents are digitized, so-called "data migration" is required to cope with the rapid change of data format and storage media. That raises the big problem of long-term support for both funding and staff.

(4) The balance between sharing cultural resources and protection of their various rights; Sharing cultural resources sometimes conflicts with the specific rules local to the original site. Arbitrating the balance is the most important point in managing cultural resources. There are two issues relating to this problem.

(4-1) There are two movements: one is pro-patent, the other is public-domain, copy-left, or well-known Creative Commons movements.

(4-2) Consideration on and protection of the non-Western concept of culturally defined intellectual properties are required. For example, in Aboriginal Australian society, several rules exist such as: (a) The portrait of a decreased person can no longer be exposed. This rule could be called "cultural moral rights." (b) Accessing and viewing sacred and secret objects are rigidly restricted to authorized people. For example, the *Tjuringa*, *Bull Roarer* cannot be exposed to women and children. (c) Copyright of design patterns of paintings and drawings is shared among a specific group (clan people), that is called "Collective Rights", totally different to the Western concept of copyright that usually belongs to the individual.

(5) Risk caused by anonymity in Sharing Cultural Resources; When sharing cultural resources in the internet environment, the situation may arise of the infringement on rights of cultural resources (plagiarism, imitation, alteration), ethical infringement (despising personal or cultural dignity), vicious political or commercial use, etc. We must clarify the mode of use of the forum for academic purposes, for feedback to original site people, for discussion, etc., and establish a mechanism for ensuring the protection of individual rights and responsibility.

4 Various rights related to sharing cultural resources

Listed below are the rights required in managing cultural resources, derived from the Japanese Copyright Act. As the laws concerning intellectual property vary from country to country, we have to consult the corresponding law when managing the cultural resources of other cultures.

(1) Ownership; transferable, salable. This is a right other than the copyright and is separable from copyright.

(2) Copyright, transferable and salable right, are a bundle of the following rights of: a) reproduction, b) performance, c) screen presentation, d) public transmission, e) recitation, f) exhibition, g) distribution, h) transfer, i) rent, j) translation and adaptation. In Japan, the term of protection of copyrights (except for moving images) begins from the date of creation of works and subsists for the life of the author plus fifty years as from the death of the concerned author of the works. In the case of moving images, the term ends at seventy years after their publication.

(3) Neighboring Rights; Rights relating to copyrights on performers, sound-image recording producers and broadcasting organization.

(4) Moral Rights of Author; Purely personal nature of the author, and composed of the following three rights to a) make the work public, b) determine the indication of the author's name, and c) maintain integrity.

(5) Work Made for Hire; Copyright of a work made by an employee in the course of his duties belongs to the employer under the following conditions: a) made on the employer's initiative, b) made in the course of the employee's duties, c) made public under the name of the employer, and d) without other agreements between the employer and employee.

(6) Profile Rights; A person whose portrait is taken and shown in moving images or photographs may claim either of a) Rights to refuse exposure of one's portrait to the public, or b) "Publicity Rights"; Rights to accept economic profit by exposing one's portrait or name to the public. These rights are said to be invalid when the portrait is mere a component of the scene.

(7) Culturally Defined Intellectual Properties; Already mentioned in (4-2) of Section 3.

(8) Problems of Repatriation; A major issue raised in recent years from the countries that used to be under colonization may be resolved by the following two methods:

(a) "Virtual Repatriation" or "digital repatriation"; Ownership and copyrights are repatriated to the original site, but maintenance for the objects is still undertaken by the advanced country, under the condition that related information about objects is shared using a forum-type archival database.

(b) Advanced country's provide support to keep objects in good condition at

the original site.

5 Case study in NME; Managing archival documents

Here, the management of photographs and moving images donated to the NME is introduced. The NME attempts to persuade the copyright holder to transfer the copyright to the NME together with ownership. NME manifests the user rules for the archival documents.

5.1 Management of acquired photographs or moving images in the NME is two-fold.

(1) Asking the owner to transfer both ownership and copyrights

    (a) Merit to the NME; 1) The NME does not need to worry about the case where transferring copyrights to another person thus requires making another agreement, 2) The NME is able to copy, use and discard if necessary, in order to promote wider academic-purpose use.

    (b) The NME takes responsibility to 1) keep the materials semipermanently, 2) resolve any problem such as infringement of moral rights when making them open to the public.

    (c) Demerit to original copyright holder; he can no longer gain commercial profit from the copyright.

(2) If the NME cannot obtain the copyright from the original holder, it will make an agreement to exploit the materials in the following cases: (a) making digital copy and modification, b) exhibition, and public relations, c) providing for academic-purpose reading, d) disclosing through the internet.

5.2 Terms of use for ethnological research archives are listed below.

(1) The user should use only for the purpose given in the application.

(2) The user should protect human rights including privacy and personal information. Subtle information such as family pedigree, nationality, opinion and belief, property, social structure, cannot be disclosed unless the person's permission has been obtained, considering problems about discrimination, persecution, minority groups, etc.

(3) Use of the materials should be confined within the permitted range.

(4) In presenting research results based on the materials, the user should pay respect to the site people, site culture. Sometimes pseudonyms (assumed names) should be used for indicating the person, place, area, etc., even if the person permits the use of real names.

6 Disclosing archival materials through the internet

As mentioned in Section 3, we have to avoid risk caused by malicious use by

anonymous internet users. At present, the NME is planning to disclose information in two ways:

(1) For disclosing to an unspecified public, the following several methods will be implemented: (a) disclose information in lower quality, for fear of vicious reuse, (b) insert watermark in images, (c) introduce mechanism to prohibit downloading.

(2) For disclosing to a personally identified person, the following steps may be taken: (a) ask the user, without excluding any independent scholar, to submit an application form to certify academic use, (b) issue a permit with a unique password to use the materials only for academic purposes, (c) the permitted users are qualified to do either, read-only, use and modify, upload one's own information or contents, etc. This classification is similar to the levels of Licenses defined by Creative Commons. By using the above method, the identified user is encouraged to indicate the erroneous information, to add exact or related information, opinions, etc. with one's signature; that is the merit of participatory forum-type management of cultural resources.

7 Proposal of copying paper-based and film-based documents for academic purposes

As is well known, analog media like papers and optical films deteriorate as time passes. In the case of deterioration of papers, the term "slow fire" is used to explain the paper embrittlement resulting from acid decay, while the term "vinegar syndrome" represents serious deterioration of film-base made of tri-acetyl-cellulose (TAC). Any type of use of such materials, including research and exhibit, inevitably quickens their deterioration. On the other hand, museums are supposed to conserve them for as long as possible. Namely, the museums have to balance between two contrary missions of conservation and effective use of cultural resources.

One solution seems to be making a copy of the original material for use, while maintaining the original in a good conservation environment. Unfortunately, the Japanese Copyright Act prohibits copying the original material unless the original is disposed or permission is granted by the copyright holder. Bound by this law, many storage organizations like museums and libraries lacking in sufficient budget and staff are unwillingly keeping deteriorated materials idle.

Now, let us change our mindset. How about allowing the copying of documents for non-profit purposes, beyond the present copyrights law? Already the Japanese Copyright Act has been amended so that the National Diet Library of Japan can make digital copies of precious documents published by 1980 to strike a balance between conservation and use. We think this amendment should be applied to other storage organizations with non-profit and academic purposes. If this amendment is realized, audio-visual documents may be kept in a hierarchically structured media
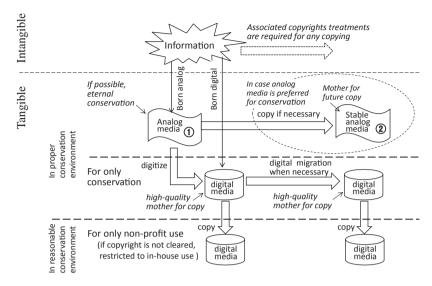
Figure 3 Media Hierarchy for Audio-visual Documents.

as shown in figure 3, where the upper half part corresponds to conservation, while the lower part represents copying and managing of media for non-profit and academic use. It is better to conserve the media ① in a rigidly controlled environment for eternal conservation, while the media ② may be kept in a less expensive manner. To relieve storage organizations in dire circumstances of heavy financial burden to keep analog media, it is desirable to establish national archives with a solid conservation environment, and those storage organizations are welcome to donate or deposit their analog collection to the nationally established archive for long-term conservation. Apart from analog media, digital information could be shared among storage organizations. We would like to propose such a hierarchical management strategy, in the case of non-profit and academic purposes.

8 Concluding remarks

This article introduces various issues to be discussed concerning the management of cultural resources, based on the experiences at the NME. The importance of ethical problems, respect for intellectual properties rights and culturally defined rights are emphasized especially when managing cultural resources. Of course, there is no standard method applicable to all museums in the world because the background situation or culture varies among each museum. But, in forum-type collaboration, experiences, knowledge and findings accumulated at each museum can also be shared and reciprocally utilized among museums.