

Isaac Mazonde and Pradip Thomas, eds., *Indigenous Knowledge Systems and Intellectual Property in the Twenty-First Century: Perspectives from Southern Africa*. Dakar, CODESRIA, 2007.

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This book discusses the challenges of identifying, protecting and advancing southern Africa's Indigenous Knowledge Systems (IKS) and Intellectual Property Rights (IPR). The book is a result of a workshop convened in Botswana in 2003, at which academics and artists were afforded the opportunity to discuss IKS and IPR and their implications for Africans. A significant challenge is that the book has not been carefully edited and therefore comes across as a collection of essays rather than a coherent text. This also makes it difficult for the reader to follow the arguments being made by the authors and to perceive connections between the chapters. Unfortunately, Mazonde's introduction to the volume signals the forthcoming lack of coherence, as it does not clearly articulate the main points made in the book. The problem of coherence gets worse in other chapters, where the authors seem not to have been encouraged to carefully re-read and edit their chapters. Despite these problems the essays do offer some interesting points to consider.

Masoga begins the discussion by motivating for deeper and more meaningful conversation between Africa and the West around issues of IKS and IRR. A lack of 'conversation' and the relegation of Africa to the 'periphery' have, in his view, resulted in a long and exploitative relationship in which the West has appropriated African indigenous knowledge and intellectual property, using it to advance its own priorities. While greed appears to have been a motivating factor in the exploitation, Masoga also argues that the West's misconception of culture and its disregard for indigenous modes of knowledge sharing have furthered the exploitation. Thomas and Nyamnjoh add to this argument, discussing the commoditisation of indigenous knowledge. Focusing on Intellectual Property (IP), they note the rapid growth of the digital economy in the 1980s and its role in reinforcing the 'global economic dominance' of the US, Western Europe and Japan (p.16). In particular, they state that proposals related to Trade Intellectual Property (TRIPs), imposed by three organisations with business interests in Europe and North America were actually rejected by the developing world. TRIPs are also meant to globally harmonise IP legislation but in fact diminish developing countries' control over their intellectual property. A similar argument is made in terms of copyright. The authors argue that today, 'the benefits of copyright are enjoyed for the most part by owners of IP [which] are invariably the cultural industries, rather than those who created the work either as individuals or through team effort' (2007: 17).

At this point the discussion takes a rather strange turn away from digitisation. The authors discuss and criticise anthropologists, who they see as the main culprits exploiting indigenous knowledge. They ask, 'should the publications and public lectures of anthropologists be copyrighted, if these consist of belittling photographs of

the so-called “primitive natives” and are written with scant regard of the dignity and humanity of those they have studied down? ... such copyrighted but problematic research does not seem to have diminished with the end of apartheid’ (pp. 18-19). They cite the case of a devious (anthropology?) professor, who used indigenous students to collect information on his behalf and used that information to make recommendations for the management of the community. The authors associate this kind of covert and exploitative research with anthropology.

Much of this discussion is relevant for the historical practice of anthropology in Africa and may be interesting to those who have no knowledge of anthropology’s past or even past discussions on anthropology. However, it is not an accurate depiction of current anthropology in southern Africa and the discussion clearly disregards the present practice and practitioners of anthropology. Even in South Africa, anthropologists are increasingly issued from post-apartheid generations, are of non-European heritage, are ethically sensitive and uphold human rights. Among them, one finds a profound awareness of the negative outcomes of exploitation in the research and publications process and action to combat unethical practice. Furthermore, by focusing on the ‘objects’ of research, the authors fail to acknowledge the extent to which the researchers and authors are themselves exploited in the research and publications process, either by the research subjects, those funding the research or publishers.

This ‘diversion’ derails the discussion on digitisation and intellectual property and fails to deepen the authors’ very interesting statements on the ambiguities of digitisation noted at the start of the chapter. The authors attempt to regain momentum by refocusing on the consequences of commoditisation, making the valuable observation that, ‘in many communities at the margins of capitalism, the knowledge of oral cultures that is not recorded in any tangible material form is deemed to be in the public domain’ (p.22). There is, as they rightly note, a disregard for other ‘regimes of ownership and control’ (p.23), in which the right to collective ownership and the sharing of IP may be asserted, as opposed to its sale and individual copyright. They also rightly call for the creation of ‘an independent transnational grassroots movement’ to create more space for developing countries and their people to negotiate their rights to and management of IKS.

In Kiggundu’s essay we learn that until 1996, producers in Botswana were unable to ‘register a patent, trade mark or design’ (p. 27), unless it had been approved of in either the United Kingdom or South Africa. This was because the British Copyright Act of 1956 remained in force despite Botswana achieving independence in 1966. Thus for a very long time Botswana suffered the loss of its indigenous knowledge. Examining the interface between IP law and indigenous knowledge, Kiggundu discusses the many ways in which indigenous knowledge has been jeopardised. Most people interviewed on the subject of their oral history and knowledge never knew that these were ‘confidential’ and that they had a right to withhold such information. Under the existing IP law, such information could not be considered confidential, as people imparting it did not originally insist on confidentiality or state that it could not to be exploited for personal gain. Similarly, in terms of patents, the law requires an invention to be industrially applicable and it makes provision for time-limited and documented protection of industrial design and trademarks. None of these, according to the author,

offers protection for the products of indigenous knowledge as the latter is not always industrially applicable, subject to time-limited protection or easily subject to timely documentation. Kiggundu concludes that the Botswana Copyright and Neighbouring Act 2000 represented a major breakthrough for IK protection in that country. However, he also calls for Model Licensing Agreements, subject to consideration by indigenous communities, universities, WIPO and UNESCO which can be used in many developing countries. He also highlights the important role of universities in informing the relevant communities about their particular indigenous knowledge rights.

Morolong's contribution on the protection of folklore under modern IP regimes identifies specific limitations to its protection under the existing copyright system. Although WIPO makes no provision for its protection in its 1967 Convention, in 1976, UNESCO and WIPO produced the Tunis Model Copyright Law which did make provision for the protection of folklore. However, its successful implementation largely depended on existing supporting legislation and resources within countries wishing to make use of the model. Morolong extends the discussion on the specific limitations ('novelty, inventiveness, originality and duration of protection', p. 52), imposed by IP law on folklore and advances alternatives for its protection. The most useful of his suggestions include: *droit de suite* in which creators of a work have the right to share in its value should it later produce substantive profit, the invocation of human rights laws to protect folklore and indigenous knowledge and the encouragement of *sui generis* systems locally to identify and protect folklore. A major benefit of the latter is that folklore need not be 'converted' to a tangible form to be recognised and protected and any use of it for gain, even by members of the 'community', requires authorisation.

What is perhaps missing from this detailed essay (and also from the previous essays), is a critique of 'community.' The authors tend to portray southern African communities as relatively undivided, homogeneous, unchanging and in agreement about IKS and IPR. Even a non-expert can imagine situations in which powerful individuals within communities attempting to control the use of folklore to the detriment of others, community members using folklore for individual gain even within the 'traditional' context and the invention or recasting of tradition so as to exploit folklore in a sanctioned context.

A similar lack of critique is apparent in the chapter by Moahi. Covering similar ground to Thomas and Nyamnjoh, he discusses copyright in the digital era and states that IK is often viewed negatively by local communities, as science and 'laboratory experimentation' (p. 73) constitute 'real knowledge.' Moahi argues that if IK is not documented, there is a danger that it might disappear but if it is documented, it is 'automatically copyrighted' (ibid). He poses the same question as the authors preceding him and comes up with the same answer. The primary beneficiaries are the 'outsiders': historians, anthropologists and pharmaceutical companies. This argument while valid in many ways, disregards the existence of indigenous historians, archaeologists, anthropologists and scientists in southern Africa and their role in promoting/exploiting IKS and IPR. A more interesting question might be what actually happens to indigenous knowledge when it is documented. Given that quite a large proportion of African indigenous knowledge is intangible, its documentation has the potential to reduce its dynamism, 'freeze' local creativity and lead to the

'accreditation' of individuals as chief knowledge bearers. Recognising these potential problems might produce alternative solutions, ones that encourage maintaining the dynamism of and collective responsibility for indigenous knowledge.

Segobyee makes one of the most useful contributions to the volume, offering a more dynamic view of communities, IKS and IPR. He says that there is a 'need for a broader reading of the ways in which communities have constructed their knowledge systems over time and how they interact with their environments in creating systems of meaning' (p. 83). This is needed not only because of the continued influence of Euro-American legacies in the region's heritage but also because of the assertion of transnational solidarities (i.e. the use of Ghanaian *kente* cloth among African-Americans in the US), which lead to the appropriation of indigenous knowledge and products. Most recently, tourism, as a transnational process and product, has had a major impact on communities, IKS and IPR. Developing countries seek to use their heritage resources to increase national revenue via tourism and the 'developed' world seeks (via tourism) to consume the exotic and to make the 'developing world ... the object of consumption' (p. 85). In this context, it is the very commoditisation of the community itself that is of issue, resulting in the loss of privacy and dignity and the ossification of culture. Segobyee points to participatory processes of heritage and resource management which may remedy the situation and argues that these processes are both desirable and possible.

The two chapters on IPR and IKS in South Africa note that IKS legislation is slow in coming and that in the meantime communities are losing their IP and IK rights. The diversity of South Africa's flora is also being exploited. Under the presidency of Thabo Mbeki, IKS and IPR assumed greater importance, as these were deemed necessary to the implementation of the African Renaissance. The first essay outlines the history of IKS legislation in South Africa. Since 2000 a draft policy on IKS has been in the process of development. In 2002 an Intergovernmental Committee on IKS was instituted but it appears that coordination across the different government departments represented on the committee is difficult. In the second paper a case study shows that traditional medicines, which fall within the ambit of both IPR and IKS, are used by a majority of South Africans and are inadequately protected. Traditional African health practitioners have little knowledge of how to protect the resources and their knowledge, especially from outside market forces and prospectors. Both authors call for a more local approach to IPR and IKS legislation echoing Segobyee's earlier call for emic work on how communities understand, use and manage their resources.

Overall, this volume raises important issues regarding IPR and IKS protection and management. However, there is no conclusion to the book and this makes it difficult for the reader to bring the various threads of the discussions together to thoroughly consider the situation and potential of IKS and IPR in southern Africa.