

Intangible cultural heritage, ownership, copyrights, and tourism

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Abstract

Purpose – This paper seeks to highlight issues surrounding ownership and copyrights relating to intangible cultural heritage and to raise potential concerns for local (rural, remote, smaller) communities involved in cultural heritage tourism.

Design/methodology/approach – The objective of the paper is to provoke reflection and further discourse on how local culture in smaller rural communities has been appropriated for tourism and related issues and concerns. Selected literature, other relevant documents and data from personal observations, derived from previous research, were examined to provide insights on the subject and to help achieve this objective.

Findings – Findings suggest that an inequity gap exists in benefits distributed to many rural communities whose cultural heritages are being appropriated and exploited by multiple commercial entities for tourism purposes and personal gain. Little, if any, of the profits realized benefit the local community – the actual creators and owners of the local culture.

Practical implications – With a new awareness and understanding of this phenomenon, developing and implementing a new and alternative approach is possible – an alternative approach that may help narrow this inequity gap while also ensuring significant sustainable benefits to all the stakeholders.

Originality/value – This paper presents new perspectives about the value of intangible cultural heritage when used for tourism. This paper should be of interest and importance to community tourism planners and policy makers, industry operators/suppliers dependent on local cultural tourism products, and consumers of local intangible culture who seek unique cultural experiences.

Keywords Intangible assets, Culture, Heritage, Tourism, Copyright law

Paper type Viewpoint

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Introduction

The fundamental re-conceptualization and reconfiguration of modern social, political, and economic boundaries (University of Guelph, 2003) is one of the greatest transformations impacting our society. To these, include the reconfiguration of cultural boundaries, particularly in the crossing of societal boundaries to commodify a community's intangible cultural heritage for tourist consumption. What once formed the social construct (culture) of naturally evolving communities and inherited by successive generations, local inherited culture has become transformed into new products for exchange in a growing global tourism marketplace. Tylor (1871) defines culture as knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society. Through escalating tourism development in many rural and remote areas, where indigenous traditions, habits and local culture hold longstanding meaning and values over generations, such transformations are becoming increasingly apparent. Several authors (Ashworth and Larkham, 1994; George, 2004; McKercher and du Cros, 2002) discuss the merits of cultural

heritage tourism arguing that local culture may be a community's most valuable asset for tourism if planned and managed properly.

A community's inherited culture (tangible and intangible cultural heritage) should provide a community with a competitive advantage and uniqueness, one that differentiates it from all other communities. However, with increasing commodification of intangible cultural heritage to provide new and unique products in efforts to satisfy the needs and whims of modern tourist markets, many smaller rural and remote communities face new concerns and issues formerly considered outside their local domain. Questions of ownership of intellectual property, traditional knowledge, copyrights and forms of protection relating to a community's intangible cultural heritage are unresolved issues in the commodification process. A central question arises, Does a community really own its distinctive intangible cultural heritage? According to Brown (2003, p. 55), "Many lawyers and activist believe that intellectual property law holds the key to heritage protection."

This concept paper outlines some issues of ownership and copyrights surrounding intangible cultural heritage in rural areas and points out potential concerns for local (small, remote, rural) communities undertaking cultural heritage tourism. The paper aims to provoke further thought and discourse on this subject. The following section first provides a brief discussion on key related concepts and insights from existing literature.

Intellectual property (IP), traditional knowledge (TK) and copyrights

Hoffman (2006, p. 10) notes, "Intellectual property may be thought of as the use or value of an idea such as inventions, designs, literary and artistic works, and symbols, names, images and performances." The World Intellectual Property Organization (WIPO), a specialized agency of the United Nations, describes intellectual property as "creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce" (WIPO, 2009, Online document). Forms of intellectual property protection include copyrights, trademarks, and patent laws. According to the Copyright Act of Canada (2009), a "copyright means the right to copy." A copyright means that only the owner of a copyright, very often the creator of the work, is allowed to produce or reproduce the work in question or to permit anyone else to do so (Business Development Center, 2009). In Canada:

A poem, painting, musical score, performer's performance, computer program – all these are valuable creations, although perhaps no one can measure their worth. Some may earn a lot of money in the marketplace and others, none at all. Regardless of their merit or commercial value, Canadian law regards all such original creative works to be copyright material. This means that if you own the copyright of a poem, song, or other work, you have a number of rights, which are protected under the Copyright Act . . . The word "original" is key in defining a work that qualifies for copyright protection . . . (Business Development Center, 2009, pp. 2-4).

Copyright laws, generally, apply to the protection of tangible materials such as literary, dramatic, musical and artistic works (including architectural works) that belong to individuals or joint owners. Copyright is restricted to the expression of an idea in a fixed manner (e.g. text, recording, or drawing); a copyright does not extend to the idea itself (Business Development Center, 2009, p. 6). The guide lays out very explicit guidelines for what is or is not considered infringements on the copyright, and includes the concept of fair dealing which allows limited permissions to copy some works for educational and research purposes. Other exceptions occur to infringement claims that allow for unfettered access to properties; these exceptions pertain to properties and works that have been relegated to the public domain. In Canada, this relegation to the public domain occurs 50 years after the death of the original creator and copyright owner. While the Copyright Act in Canada offers protection (i.e. copyrights, trademarks, patents, and trade secrets) to individuals and/or joint owners of tangible properties, there is far less discussion that speaks to the protection of collectively owned (community) intangible assets or traditional knowledge.

Moral rights

The notion of moral rights attaches to the concept of copyright protection. The Copyright Act (Canada) states that even if you, as owner of a copyright, sell your copyright to someone else, you still retain what are called "moral rights" (Business Development Center, 2009).

This means that no one, including the person who owns the copyright, is allowed to distort, mutilate or otherwise modify your work in a way that is prejudicial to your honor or reputation. A person's name must also be associated with the work as its author (creator), if reasonable in the circumstances. In addition, your work may not be used in association with a product, service, cause or institution in a way that is prejudicial to your honour or reputation without your permission. A moral rights approach protects the integrity of the copyright holder. "The integrity right that protects the reputation of creators may address the anxiety over the inappropriate use of expressions of folklore by preventing distortion, alteration or misrepresentation of creator's works" (Wendland (2006), in Hoffman, 2006, p. 11).

Traditional knowledge (TK)

Wendland (2006) (in Hoffman, 2006, p. 328) suggests, "Traditional knowledge and cultural expressions are often the product of intergenerational and fluid social and communal creative processes that reflect and identify a community's history, cultural and social identity and social values." The term, traditional knowledge, refers to the content or substance of knowledge that is the result of intellectual activity and insight in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge that is embodied in the traditional lifestyle of a community or people, or is contained in codified knowledge systems passed between generations (Wendland (2006) in Hoffman, 2006). Wendland also contends that traditional creativity is marked by a dynamic interplay between collective and individual creativity, which makes it difficult, from an intellectual property perspective, to ascertain what an individual creation is. Individual minds coming together in a living society are constantly imitating, recreating and innovating the traditional framework in a community's evolving social construct. However, Wendland (2006) (Hoffman, 2006, p. 328) purports distinct characteristics define traditional knowledge (TK):

- TK is handed down from one generation to another, either orally or by imitation.
- TK reflects a community's cultural and social identity.
- TK consists of characteristic elements of a community's heritage.
- TK is made by authors unknown and/or by communities and/or by individuals communally recognized as having the right, responsibility, or permissions to do so.
- TK is not made for commercial purposes but as vehicles for religious and cultural expression – a social construct.
- TK is constantly evolving, developing, and being recreated with the community.

Indigenous cultural heritage issues

Ongoing research focuses on the disputes and debates about intellectual property rights and ownership of cultural resources in aboriginal or indigenous communities, whose secret and sacred traditions have been appropriated and exploited by outsiders over centuries (Bartlett, 1999; Brown, 1998, 2003; Coombe, 1998; Marcus, 1998; McDonald, 1998; Root, 1995; Ziff and Rao, 1997). Many of the disputes center on the appropriation by large biotechnology firms of local indigenous knowledge of medicinal plants and herbs and the natives' knowledge of traditional healing methods from the natural world. Brown (2003), in his work, "Who Owns Native Culture," writes extensively about the global search for native medicinal and mind-altering plants, many of which are thought to promote health and longevity. New medicinal discoveries are made from the flora and fauna found in South America, whose healing attributes were known to the indigenous people for centuries before being appropriated by Western biotechnology and transnational pharmaceutical companies (Brown, 2003).

These large pharmaceutical companies, using their power and large networks, patent folk medicines without any benefit or credit whatsoever to the original discoverers – the indigenous peoples. The Rural Advancement Foundation International (RAFI) refers to this type of appropriation as biopiracy (Brown, 2003). Brown notes that RAFI was dedicated to resisting the global theft of genetic resources by capitalist industry. In 2001, RAFI became known as the ETC Group and a registered civil society organization (CSO) in Canada and

the Netherlands. RAFI was the first civil society organization (nationally or internationally) to draw attention to the socioeconomic and scientific issues relating to the conservation and use of plant genetic resources, intellectual property and biotechnology. Other sources of conflict also emerge when outsiders appropriate native cultural resources – music, design styles, folktales and stories, religious practices and so on. This appropriation of knowledge often materializes in various forms of contemporary music, jewelry, clothing design, dolls, stories, and new age religious worship activities, which are constructed by outsiders who borrow (steal) ideas and techniques, for example, from indigenous shamans.

The invasion by outsiders (tourists) of their sacred landscapes and cultural spaces, places that have remained integral to their way of life over hundreds of years, is another troubling issue for indigenous peoples. For instance, the Bighorn Medicine Wheel in Wyoming, USA, became a site of controversy when S. C. Simms, an early anthropologist, described his visit and experience to the Medicine Wheel in 1902. This site later became a significant archeological find that, according to the numerous artifacts that were found, dates back to between A.D. 1200 and 1700. These artifacts show the Native Americans used this site for a variety of purposes – hunting, collecting and religious activities – for perhaps seven thousand years (Brown, 2003, p. 140). Although their beliefs and relationship to the site have been kept relatively secret, even today, the tribes of the region regard the Bighorn Medicine Wheel as a powerful and sacred place.

The site warranted protection due to the increasing number of tourists visiting the site as a result of increased publicity and increased access on improved highways. The number of visitors rose from about 2,000 in 1967 to 70,000 in the early 1990s (Brown, 2003, p. 147). This increased tourist visitation resulted in serious negative impacts to the site, including damage to the footpaths and vegetation, excessive garbage and dumping of other inappropriate items. The State, at the time (1990s), also proposed changes to further increase access to the general public, a move that escalated tensions and resistance among the Native American tribes that deem the site to be a sacred space.

Conflict also surfaced regarding Devils Tower, another sacred Native American site located in Wyoming, that draws nearly half a million visitors a year to the area (Brown, 2003). Many of these visitors are rock climbers (adventure tourists) who are drawn to climb and challenge the steep Tower. Tensions emerged when native tribes in the region complained that climbers “who ascended Devils Tower showed a lack of respect for spiritual forces resident there” (Brown, 2003, p. 151). Similar incidents frequently arise today in the USA and Canada as well as in other parts of the world. The relationship between cultural conflict and tourism is a central theme throughout this paper.

Advocates for native rights would like to see the integrity of indigenous cultures ensured by laws that treat heritage as an inalienable resource (Brown, 2003, p. 6). However, Brown (2003, p. 7) raises some critical questions, “To what extent can law control the movement of ideas? Does it make sense for ethnic groups to define their cultural practices as property that cannot be studied, imitated or modified by other without permission? How far can democratic states go to provide indigenous peoples with cultural protections without violating the rights of the general public?” Ongoing debates and discussions about intangible cultural heritage issues have led to new forms of regulation and laws in some countries, for example, in New Zealand, Australia and Panama, designed to protect the intangible heritage of native populations (Brown, 2003).

The Daes Report

In 1997, the United Nations released a document, entitled, “Protection of the heritage of indigenous people,” also known as the Daes Report. The purpose behind producing the report was to support the case for Total Heritage Protection. The Daes Report (in Brown, 2003, pp. 211-212) concludes:

[. . .] that a society owns its heritage, defined as everything that belongs to the distinct identity of a people and which is theirs to share, if they wish, with other peoples. . . each indigenous community must retain permanent control over all elements of its heritage, under its own laws and procedures, but always reserves a perpetual right to determine how shared knowledge is used. Members of such communities own their heritage, including its works, arts and ideas.

The Daes Report raises some important issues. While the document characterizes indigenous cultures as part of the common heritage of all humankind, nothing is said about the world's cultural and intellectual commons or whether one should even exist, that is, it takes for granted that indigenous peoples are not part of any public other than their own enclosed conceptual universe and territory (Brown, 2003, p. 212). Brown asserts, "From the report, one can reasonably infer that any social group that qualifies as 'a people', indigenous or not, enjoys equally absolute rights over its cultural productions" (Brown, 2003). Brown's inference leads directly to the central question in this paper, "Does any community own its intangible cultural heritage?"

UNESCO's position on intangible cultural heritage

On October 17, 2003, UNESCO, recognizing that "...intangible cultural heritage – or living heritage – is the mainspring of our cultural diversity and its maintenance a guarantee for continuing creativity..." adopted the Convention for the Safeguarding of the Intangible Cultural Heritage (ICH) (UNESCO, 2003, Online Document) which states:

[Intangible cultural heritage (ICH)]...is traditional and living at the same time. It is constantly being recreated and mainly transmitted orally. The depository of this heritage is the human mind, the human body being the main instrument for its enactment, or – literally – embodiment. The knowledge and skills are often shared within a community, and manifestations of ICH often are performed collectively (Online Document, *What is Intangible Cultural Heritage?*).

The UNESCO Convention (2003, p. 2) also declares:

Intangible cultural heritage means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.

What is cultural appropriation?

Ziff and Rao (1997, p. 1) define cultural appropriation as "the taking – from a culture that is not one's own – of intellectual property, cultural expressions or artifacts, history and ways of knowledge." From their research, Ziff and Rao reveal the complexity of this concept and its multidimensional nature. Because of the enormity of the topic, this paper cannot fully elaborate on this complex phenomenon and the many forms, and varying degrees, of appropriation. However, the range of instances of so-called cultural appropriation is broad, and while some incidents are clear-cut, others are extremely difficult to define. Humans have been borrowing from others since the beginning of time. "Acts of appropriation happen all around us in a vast number of creative domains as cultural influences blend, merge, and synthesize" (Ziff and Rao, 1997, p. 4).

Concerns about cultural appropriation, as illustrated in the previous discussion, are a longstanding issue for indigenous peoples in many countries. According to Ziff and Rao (1997, p. 8), these concerns give rise to several claims:

- Cultural appropriation can harm the appropriated community; it can negatively impact the integrity and identities of cultural groups.
- Cultural appropriation can impact the cultural object itself; it can either damage or transform a given cultural good or practice.
- Cultural appropriation wrongly allows some to benefit to the material detriment of others (deprivation of material advantage).
- Current law fails to reflect alternative conceptions of what should be treated as property or ownership in cultural goods.

Indigenous and non-indigenous: intangible cultural heritage and tourism

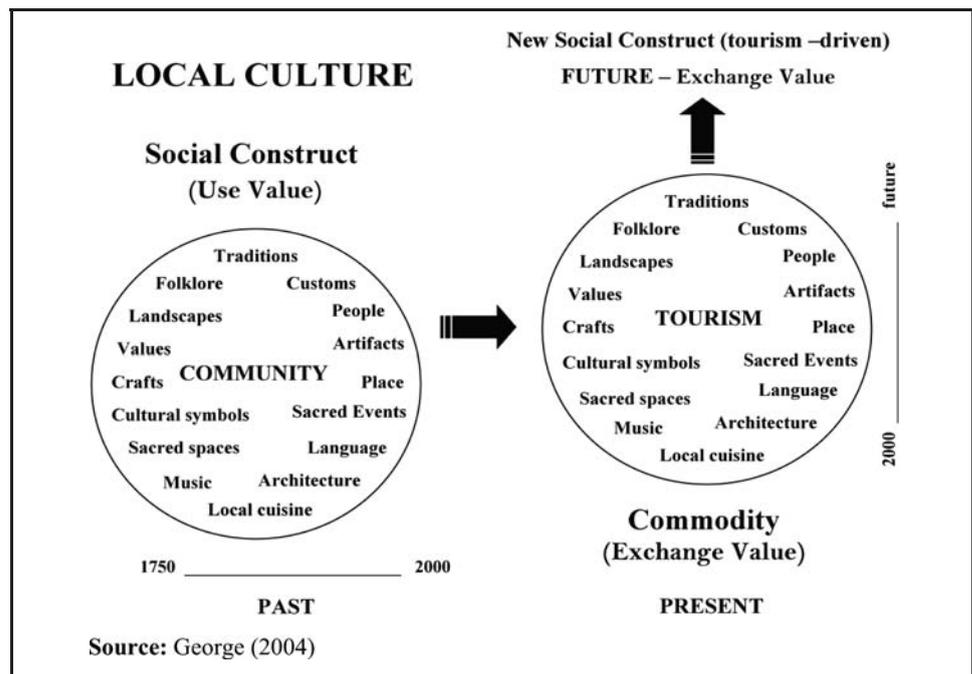
While much of the previous literature review and discussion in this paper concentrates on the concerns and issues of indigenous peoples regarding their intangible cultural heritage, other critical questions surface. Do non-indigenous communities have the same or similar concerns and issue? How do the rights of intangible cultural heritage apply to non-indigenous communities?

In many isolated rural and remote rural communities, after centuries of evolution and building of unique and strong cultural traditions, expressions, customs and ways of life, a more subtle form of appropriation is taking place through tourism. Parts of the communities' spontaneous and evolutionary social constructs – their cultural heritage resources – are now being transformed into commodities for exchange and exploitation through modern tourism development. Using hypothetical timelines, Figure 1 illustrates this transformation.

Commodification of culture for tourism occurs when a community's culture, developed over past years, perhaps centuries, and created through ordinary spontaneous evolution under principles of use value, that is, an essential elements in the social fabric and essence of everyday life in a community, becomes converted into objects of exchange value for tourist consumption. Subsequently, culture gets transformed and reconstructed into a completely different entity, and a consumer value system supersedes a longstanding community value system (George, 2004, p. 333). This consumer value system often distorts the original culture (through inaccurate marketing narratives, unauthentic tourism activities and inappropriate use of cultural resources) over which a community has little or no control.

In many smaller rural communities and indigenous communities adopting tourism, this dilemma becomes very real and controversial, leading to tensions and conflicts between residents and others. Entrepreneurs, governments, marketers, film-makers, photographers, tour operators, artists, among others, see rural cultural heritage manifestations as novel product opportunities and they are increasingly appropriating and exploiting local intangible culture and heritage for their own commercial purposes and profit gain. For example, tour operators sell to and carry hundreds of tourists throughout living communities to observe and consume the local countryside, intangible heritage, cultural landscapes and sense of place, reaping economic gain from these unique tourism offerings. Little, if any, profits

Figure 1 Commodification of cultural heritage for tourism



realized by these tour operators directly benefit the local community – actual creators and owners of these cultural products. This, arguably, is a form of deprivation of material advantage as described by Ziff and Rao (1997, p. 8) in “What is cultural appropriation”.

Cultural appropriation, arguably, allows some to benefit from the contribution of others (Ziff and Rao, 1997, p. 14). Deprivation of material advantage basically means that others wrongfully exploit cultural resources for financial gain to the detriment of the owners and creators. When outsiders appropriate someone else’s cultural resources for profits, they prevent the owners from doing so and/or reaping their rightful share of the potential financial benefits. Ziff and Rao (1997, p. 15) argue the Law of Trademarks provides a reasonable analog in this context. A trademark serves to represent a product or service and to embody the goodwill that a commercial enterprise has established over a period of time. A trademark is intended to prevent others from benefiting on the goodwill built from the efforts of an enterprise. The law also tries to ensure that someone cannot “free ride on the works of others” (Ziff and Rao, 1997, p. 15). While cultural appropriation is undoubtedly a serious issue for indigenous communities, it is also an issue for non-aboriginal rural communities that have tourism development (George, 2004). Two communities are now discussed to help illustrate how this phenomenon unfolds in smaller rural communities in Canada. Both communities – Lunenburg, Nova Scotia, and St Jacob’s, Ontario – are considered to have a well-established tourism industry built on use of their local cultural heritage assets.

Lunenburg, Nova Scotia, Canada

Lunenburg, Nova Scotia, is a small rural community on the east coast of Canada. UNESCO declared the area a World Heritage Site (WHS) in 1995 and the community immediately positioned itself as an international cultural destination. The community, with approximately 2,500 residents, claims to receive 300,000 tourists annually, although this number has not been substantiated by any official data; in fact, the recorded number of visitors to Nova Scotia shows a decline in recent years. Lunenburg is the birthplace of the world famous racing schooner, *Bluenose*, and following its demise, a subsequent *Bluenose II*, which has been one of Nova Scotia’s top attractions for decades. The first schooner was built around 1921 as a vessel for fishing on the Grand Bank but quickly gained fame for its remarkable racing ability. The schooner entered and won many racing competitions, both in Canada and USA, which brought worldwide fame and immense local pride to the small community. The schooner sank off the West Indies in 1948 and was subsequently replaced by a new vessel built in 1963, the *Bluenose II*, which still exists today. Local builders constructed both vessels at Lunenburg shipyards.

The *Bluenose* serves as a symbol of the “days of glorious sail when men were rugged, hardy toilers, competitive and determined, persevering and always facing danger in their efforts to be masters of the sea – the Golden Age of Sail” (Cuthbertson, 2002, in George, 2004, p. 173). Cuthbertson (2002, p. 75) writes: “The *Bluenose*’s racing triumphs served to keep spirits up in the face of the hardest times any Lunenburg generation has known.” Following the sinking of the original schooner, “The building of the *Bluenose II* by the Oland family ensured that the legend of the great schooner would not die” (Robinson, 1989, p. 72). A few years later, the Oland family sold the *Bluenose II* to the Government of Nova Scotia to be used as an ambassador and promotional tool for the Province. Over the years, however, the vessel fell into disrepair and deemed unseaworthy at one point. Out of concern, a local Lunenburg group of volunteers created a non-profit organization, The *Bluenose Heritage Preservation Trust* (the Trust), with a lofty goal to preserve the famous schooner and restore its seaworthiness. The Government charged the Trust with the responsibility to manage the *Bluenose* and to initiate a preservation plan. Through the years, the organization contributed significantly towards preserving the historic schooner through various efforts (e.g. fundraising, sales of memorabilia, books and clothing from a local store, donations, and so). The Trust attempted to claim the copyright for any images of the famous vessel. This claim, however, led to conflict and confrontation over issues of ownership and intellectual property.

The Trust initiated a lawsuit against a commercial clothing outlet for using images of the famous schooner on its products. The lawsuit against the so-called infringing company caused an outcry from many people who said the Trust could not legally lay claim to an

image that was already being widely used in tourism displays and even on the Canadian dime (Canadian Press, 2003). The provincial government was forced to intervene in attempts to resolve the intellectual property issues. As a result, the Government re-claimed its ownership of the Bluenose II and any use of its images (see Figure 2). The Government proclaimed, "But at the end of the day, we'll make sure that Bluenose II is going to be able to be widely displayed, that it can be there for the maximum benefit of Nova Scotians and businesses that utilize the Bluenose as an image" (Canadian Press, 2003). The court case was dropped and the local Trust company was relieved of its management responsibilities and any claims to copyrights related to the Bluenose.

The many tour operators who bring hundreds of tourists into the town each year demonstrate another example of cultural appropriation occurring in Lunenburg. When compiling their tour packages, tour operators include several independent components so as to provide an inclusive and appealing tour for their clients, for example, accommodations, restaurants or other food services, entertainment, activities, and other amenities, for which customers pay a fee. A typical tour package might also incorporate sightseeing of local scenery, cultural landscapes (including graveyards) and numerous other local symbolic spaces. Symbolic content confirms local memories and identities; space has the capacity to embody sets of values from which people derive significance and meaning (Meethan, 2001). In addition to these components, a commercial tour package to Lunenburg frequently includes: observation of and, in many cases, participation in ongoing local customs and cultural traditions; photo-taking and video-recording of local people, local and unique architectural constructions and old historic homes, particularly those displaying the intriguing local architectural feature, called the *Lunenburg Bump*, as well as other locally specific cultural heritage attractions (i.e. churches, shipyards, former waterfront working sites); use of the community's washroom facilities; use of local trails and walkways, and so on (see Figure 3). For these additional components in a packaged tour, which undoubtedly add high value to the product, there is little or no financial compensation from the tour operator to the host community. Put another way – there is no cost to the operator for this locally distinctive component of his tour package – a freebie – although, arguably, this unique component provides the cultural "essence" of the tour product.

Tour companies also benefit from the multiple images they frequently acquire during their visits to community destinations for use in their own promotional materials – a benefit they

Figure 2 The Bluenose – a community's cultural icon as depicted on the Canadian dime

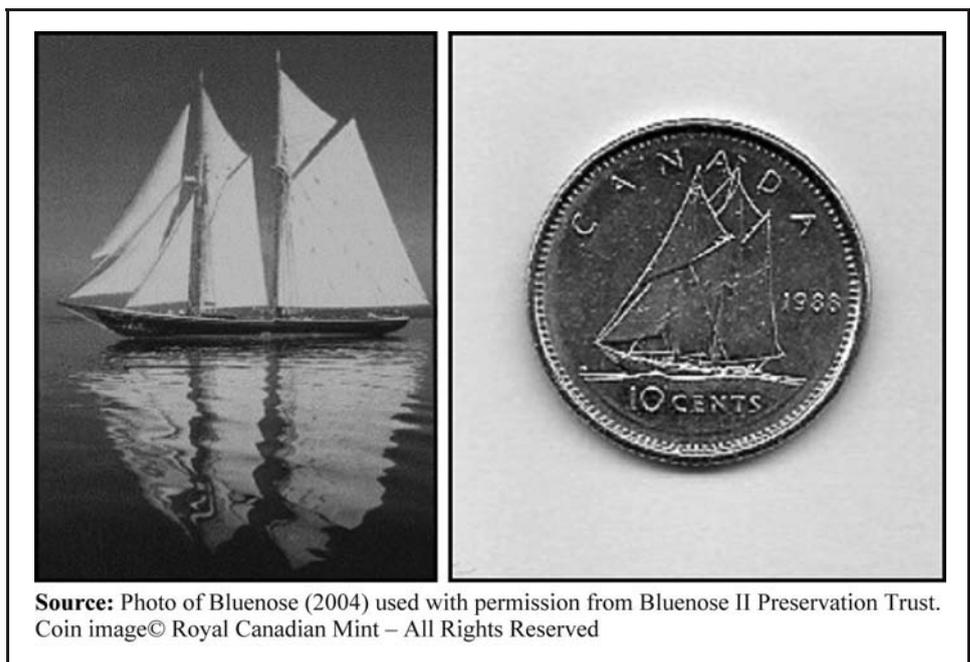


Figure 3 Popular images for tourists and photographers – historic architecture in Lunenburg



receive without acquiring the consent of or provide compensation to the local community. Tourism operators will frequently argue that a community reaps benefits from the tourist expenditures in the community. This is not the main issue. The type of business model generally used is one that appropriates local cultural resources for the benefit of commercial tour companies while providing little or no benefits to the local community – the producers of a valuable component. Arguably, this is a deprivation of material advantage for the community.

St. Jacob's, Ontario, Canada

St Jacob's is another small rural community located in the heart of Canada's industrial province, Ontario. The village is home to roughly 1,500 residents, many who follow the Mennonite tradition.

The Mennonites are a group of Christian Anabaptist denominations named after Menno Simons (1496-1561), though his writings articulated, and thereby, formalized the teachings of earlier Swiss founders. . . founded on both the mission and ministry of Jesus Christ, which they held to with great conviction despite generational persecution by the Catholic church state. . . Mennonites have become known as one of the historic peace churches given their commitment to nonviolence, nonviolent resistance/reconciliation, and pacifism (Wikipedia, 2009).

According to Hunsberger *et al.* (1977) in *People Apart: Portrait of a Mennonite World in Waterloo County*, the Mennonite people:

. . . in the surrounding area can trace their heritage directly to the Swiss – South German regions of Europe of the 1520's. . . sought religious freedom in the United . . . as early as the late 1600's and early 1700's. Around 1800, they continued their quest and moved north from Pennsylvania to Upper Canada, to what later came to be known as Waterloo County, Ontario. Here, in the 1880s, those who have come to be known as the Old Order separated themselves from other Mennonites of the county (Hunsberger *et al.*, 1977).

Many Old Order Mennonite farmers and families, who still retain the traditional religion, customs and lifestyle of their early forefathers, live in the rural areas around St Jacob's, located in the Waterloo region of Ontario. To see a horse and buggy driving alongside the modern paved highways throughout the region is not uncommon.

In recent times, the religious sect and its unique way of life have been blatantly depicted in various forms of tourism marketing literature. Marketing of the sect's sacred icons and cultural symbols to attract tourists to the area is demoralizing to many. Indigenous cultures have sometimes purposely used cultural symbols as a logo or brand to represent themselves as a tourism attraction. However, other communities may have been branded without any intention. Such may be the case in St Jacob's, where commercial operators have

appropriated local road signage intended to caution motor vehicles to the presence of horse drawn carriages in the area, a mode of transportation still used by the local Mennonites. The “horse and buggy” image on the signage has manifested into a symbol of Mennonite tradition and culture, and is commonly seen as a logo in promotional materials and on storefronts for tourism in St Jacob’s (Figure 4). The tourism industry has appropriated the Mennonites’ cultural heritage to brand St Jacob’s as a tourism attraction.

When a business sells a product to tourists that includes the sightseeing of a community’s architecture and surrounding landscapes, or uses this location’s folklore and myths as part of its advertising appeal without the knowledge, consent, or benefit of the community, it can be said to be appropriating that community’s culture. Copyright laws protect academia and entertainers, but few, if any, laws exist to protect a community’s cultural resources. Tourism is an industry where the notion of cultural appropriation, that is, the borrowing or taking (stealing) from others (Ziff and Rao, 1997), is pervasive.

While tourism is important to the community, Dahms reports that potential issues were brewing as far back as the early 1990s.

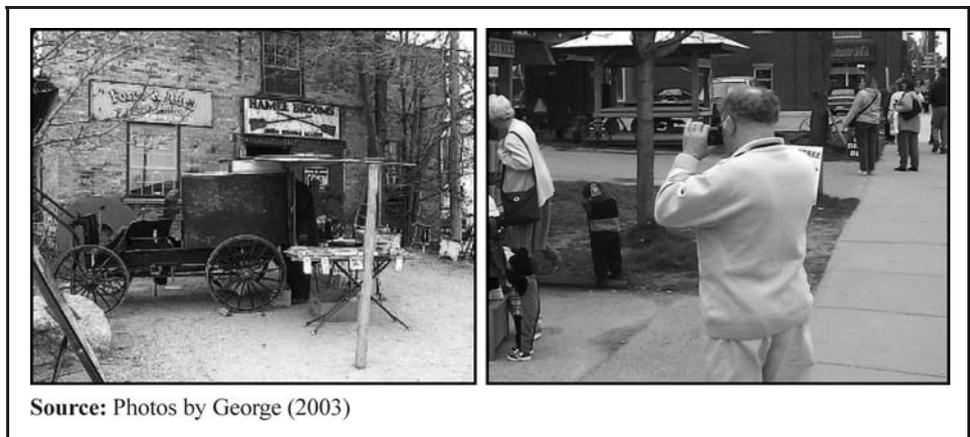
Unfortunately, the seeds of decline lie within the recent success. The community is excessively busy, some residents resent the tourist influx, and many Mennonites now go elsewhere to shop. Over-development may well ruin the basis of the town’s tourist appeal (Dahms, 1991, online abstract).

In 2003, personal observations taken from a visit to the area indicate that tourism had become overly commercialized resulting in a sense of a lost authentic cultural community. Local Mennonites still travelling into town today by the traditional horse and buggy to go about their daily business are often besieged by curious camera carrying tourists (Figure 5). Currently, no research appears available that would reveal or help explain the personal

Figure 4 Intangible cultural heritage appropriated as a tourism brand



Figure 5 Visitors photographing Mennonite cultural heritage – a tourism attraction



attitudes and perceptions of local residents towards tourists or the impacts of tourism on life in the village.

Is there a better way – a more equitable and sustainable approach that would benefit all stakeholders today and also protect intangible cultural heritage for future generations?

Issues and problems around ownership and intellectual property concerning intangible cultural heritage are unlikely to be resolved any time soon. Extensive research on indigenous issues has shown that numerous cases have been and are still before the courts. Interpretations of laws and legislation concerning intellectual property are complex and obscure. Smaller rural communities engaging in cultural-based tourism usually do not have the financial resources to adequately manage, sustain and protect their cultural heritage assets. There must be a more equitable and sustainable approach that would benefit all stakeholders. Communities create and own their cultural assets and are entitled to their rightful share of the financial benefits that are being reaped by the tourism industry.

Implementing a type of cultural heritage preservation tax on visitors who consume local cultural assets is one suggestion toward achieving equity and sustainable tourism. This tax could support a special fund that would directly benefit the entire community. All the stakeholders – community, tourism industry and visitor alike – would be benefactors of a Community Cultural Heritage Preservation Fund.

For the community, such a fund would help generate badly needed resources and a means for a community to enable better management and preservation of its cultural heritage assets. For example, the fund could provide monies to subsidize employment of a full-time cultural heritage manager who would be responsible for all functions relating to use of a community's cultural heritage resources. This strategy would empower and give control to the community in protecting the integrity of its own cultural assets, for example, regarding how its cultural heritage gets interpreted to visitors through marketing materials and activities. Most importantly, such a fund could provide compensation for a resource person to educate the public about the importance of protecting local cultural heritage assets and ensuring authentic local experiences for visitors.

For the tourism industry, implementation of such a strategy would help ensure authentic heritage products and cultural experiences for its customers, providing cultural products that are carefully maintained, protected and reproduced under the jurisdiction of the community (genuinely local), thus giving a value-added element to existing cultural tourism products. This strategy would ensure a long term and sustainable supply of authentic cultural components for tourism industry suppliers and their future customers. Finally, for the visitor, adoption of such a strategy would help to ensure that he/she would receive an authentic and truly local heritage product and cultural experience, a cultural tourism product that has been certified by the producing community (the actual creators).

Creating a Community Cultural Heritage Preservation Fund in smaller rural communities might entail applying such tactics as:

- a visitation fee/head tax to commercial tour operations for every customer (tourist) brought to tour a culture-based tourism community (fees paid to the community);
- a fee for the opportunity to capture exclusive on-site photos of local cultural heritage assets, for example, from inside of local museums, churches, schools and heritage architectures (no photos, no charge);
- an entrance fee to local cemeteries, heritage buildings/sites and museums;
- licensing fees for outsiders to take and use local cultural images for their own commercial promotional and marketing purposes (e.g. photographs used in brochures, on web sites);
- a fee for commercial filmmaking in the community;
- heritage preservation donation boxes in strategic locations around the host community (most tourists are well-educated and understand/respect the importance of preservation).

Numerous creative and innovative strategies could be developed and implemented to generate significant funds aimed at community heritage preservation. For instance, in a small community that would receive 150,000 visitors annually, a one-dollar visitation fee per visitor would generate a preservation fund of \$150,000.

Conclusion

In conclusion, reconsider the central question, “Does a community really own its distinctive intangible cultural heritage?” This paper does not suppose to answer this question but, rather, to provoke thoughts and stimulate further discourse on the subject. As discussed, the issues around intellectual property rights and ownership are huge and complex, particular within the realm of tourism, an industry where culture is deeply embedded in the tourism experience. Some will argue that tourism would not exist without culture (Jafari, 1996). While certain facets of a culture can be copyrighted, such as pieces of written music, artworks or other visible manifestations, the intangibles – ideas, meanings, collective identity attributes, oral and unwritten expressions, and the symbolism attached to these – cannot be easily protected. Intangible and tangible cultural aspects are accumulated and reproduced during the evolution of a local community in building its collective and social value system – a social construct. Through tourism, however, these cultural aspects become converted into commercial products for exchange. In fact, culture is the dominant lure for a market niche that is seemingly increasing, both in demand and supply, in the growing global tourism economy.

Unquestionably, the tourism industry derives significant economic benefits from local intangible cultural heritage. A major moral and ethic issue stems from the tourism industry’s failure to recognize the monetary value of local intangible cultural heritage in its tourism production and to fairly compensate the local producers and creators (communities). A logical step is to develop a more equitable and sustainable approach that would benefit all stakeholders. Creating a community cultural heritage preservation fund certainly is one approach that needs further exploration. If communities are the creators and owners of their cultural assets, they are entitled to a rightful share of the economic benefits that the tourism industry generates.

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Further reading

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