CASE STUDY 46

A secret tapestry is made available to the public

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Disclaimer: the facts in this case study are entirely fictitious. Any resemblance with actual facts is mere coincidence.

#### **Facts:**

1. The National Museum of Ethnography in the country Bobin holds a collection of ethnographic material from communities and groups from all over the world, including indigenous peoples.
2. In recent years, the museum began digitizing its collection to create an online archive in order to reach out to wider audiences and to promote the conservation of their ethnographic collections, respect for cultural diversity, and the safeguarding of intangible cultural heritage. Anyone with internet access can access this online archive for free.
3. In most cases, the museum has received permission to make digital copies of the objects, but in some cases the museum staff was unable to contact the relevant rights holders. In such cases they decided not to make materials available online.
4. In the 1970s, a tapestry had been given by the Xin community to an anthropologist employed by the museum. The imagery on the tapestry depicts the sprouting of plants in spring. Community members believe that as long as the tapestry is kept in good condition and not displayed in public outside their spring festival, they will have good crops; otherwise the spirits will be angry which may have a negative impact on their crops.
5. The community was struggling to keep the tapestry in good condition as it aged, so they agreed that the tapestry should be kept by the museum under the following conditions: (a) that it would be conserved, (b) that authorized members of the community could access it as required during the spring festival, and (c) that it would not be put on public display.
6. The tapestry was woven on a traditional loom, using traditional techniques, by three women in the community, the last of whom died 80 years ago. The highly stylized designs are unique to the Xin, and have been passed down from generation to generation, but each time they are woven into cloth, the weavers create their own interpretation of the design.
7. A year ago, without properly checking its records or trying to contact the community members, the museum made a reproduction of the tapestry available online. The entry on their digital archive was linked to the digital copies of the anthropologist’s field notes in their library, explaining the significance of the tapestry to the community concerned and the consequences of displaying it outside of the spring festival. The metadata on the digital copy of the tapestry explains under what conditions the Xin had given their consent to the conservation of the tapestry within the museum.
8. The museum’s website encourages viewers to create new artworks based on the open access collection. A contemporary artist, known for his deliberatively provocative work, used the online archive to create a large graffiti painting, copying the tapestry’s patterns. He called his artwork the ‘death of springtime’.

#### **Questions for discussion:**

1. Does anyone own the copyright in the tapestry, or is it in the public domain?
2. Does the Xin community have intellectual property rights over the tapestry because they are ‘owners’ or stewards of the ICH associated with the tapestry?
3. What ethical guidelines might the museum have violated in making the digitized tapestry available online?
4. Did the museum have the legal right to make a digitized copy of the tapestry available online?
5. Did the artist infringe any intellectual property or other rights of other parties? If yes, whose intellectual property or other rights did the artist violate? Did he do anything wrong, ethically?
6. Now that the tapestry has been made public, what can be done?
7. What can the community and/or the museum do to prevent such a situation from happening again?

#### **Information about copyright law:**

Copyright is an intellectual property right that is granted, without the need for registration, to the author(s) of any original creative work that is expressed in a fixed form. It protects artistic expressions in the form of artworks, paintings, songs, books etc., but not ideas as such. Copyright gives author(s) exclusive rights to the use, publication and distribution of the work for a limited time. In Bobin, works are protected by copyright for a period of 50 years from the year of the death of the author(s) of the work.

From an intellectual property perspective works no longer protected by copyright are considered to be part of the public domain, and people are free to access and use them as they wish. Some indigenous groups challenge the inclusion of their traditional cultural works in the public domain as use of these works remains subject to cultural restrictions even after the term of copyright has expired, but the copyright law in Bobin does not currently provide for any exceptions in this regard. There is no specific law protecting intellectual property rights in traditional knowledge or traditional cultural expressions in Bobin.

In some countries, especially those based on civil law systems, such as in Bobin, copyright comes with another set of rights, known as ‘moral rights’. Moral rights granted in Bobin to all authors include the right to be named as author, and to prevent the work from being altered without permission. In the legal system of Bobin, there is no time limit on the exercise of moral rights.