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A moral reflection on the digitization of Africa's documentary heritage

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Abstract

Although digitization offers some solutions to problems of preservation and access, access to digitized collections and their preservation, especially in the longer term, may be problematic. The problems are not only technological, but also economic, political, legal and moral. In the developed world national libraries and other research libraries are engaged in major projects to digitize significant heritage collections reflecting the history and culture of their respective countries. On a smaller scale African documentary heritage materials are also being digitised. This paper raises moral concerns relating to projects aiming to digitize African heritage materials before addressing the question of how these concerns can be addressed and which locally and globally acceptable moral framework can be used to adequately guide the process of digitization and protection of Africa's documented heritage. It is argued that information based human rights (which are based on and derived from the Universal Declaration of Human Rights) can provide such a moral framework. Human rights are normally articulated as legal rights and as such do not always guarantee (moral) fairness in their application. To ensure a just and fair application of the proposed information-based human rights, a social contract, based on social justice is proposed. The paper ends with guidelines based on the proposed moral framework.

Introduction

Digitization is sometimes presented as a panacea for problems of preservation and access. However, access to digitized collections and their preservation, especially in the longer term, may be problematic. The problems are not only technological, but also economic, political, legal and moral. Pickover & Peters (2002) have pointed out that digital technology is not ideologically neutral and poses social and political as well as technological challenges:

Digital technology in itself can be seen as a form of cultural imperialism. This is because: English is largely the language employed on the Web ...; orality is being displaced; and American culture on the Net is an overwhelming influence. Furthermore, the lure of financial aid has spawned a new form of imperialism reinforcing the digital divide, as countries in the North loot the intellectual property of an African heritage in the name of preservation (Pickover & Peters, 2002:18).

This comment appears to strike a discordant note amid a world-wide enthusiasm for digitization projects. In the developed world national libraries and other research libraries are engaged in major projects to digitize significant heritage collections reflecting the history and culture of their respective countries. Probably the best known example is the American Memory project of the United States Library of Congress, which comprises more than seven million “digital items” from over 100 historical collections (United States. Library of Congress, 2003). Many more national libraries are digitizing specialized items or collections. In many cases “treasures”, selected on account of their particular beauty, rarity or interest, are displayed on the world-wide web as “virtual exhibitions”, for example, *Treasures from Europe’s National Libraries* (Treasures..., 2003) The laudable aim of such projects is to make the material accessible to the general public, mainly via the world-wide web. It is an exciting prospect that anyone with access to the Internet can gain access to a kaleidoscopic sampling of the world’s cultural heritage.

However, the operative words are “with access to the Internet”. If African documentary heritage is digitized, how many Africans will be able to benefit? The issues are clearly not merely economic. This paper raises moral questions concerning projects aiming to digitize African heritage materials. For example, who selects the material to be digitized? Whose priorities and interests determine the selection? Who are the beneficiaries? Are libraries in Africa able to acquire the digitized material? Is the digitized text freely available to African scholars?

The paper is structured in the following manner: The first part focuses on the digitization of African documentary heritage. The main moral concerns regarding this process are raised. These moral concerns introduce the second part of the paper where we put the question, how can the moral concerns be addressed and which moral framework, that is locally and globally acceptable, can be used to adequately guide the process of digitization and protection of Africa’s documented heritage? In part three it is argued that information-based human rights (which are based on and derived from the Universal Declaration of Human Rights) can provide such a moral framework. Human rights are normally articulated as legal rights and as such do not always guarantee (moral) fairness in their application. To ensure a just and fair application of the

proposed information-based human rights, a social contract, based on social justice, is proposed. The paper ends with practical guidelines based on the proposed moral framework.

I Digitization of African heritage material

To what extent are African heritage materials being digitized? In the developed world many projects, some of considerable scale, have been under way for decades to *microfilm* African newspapers and other Africa documentary material of interest to Africanists. The best-known programme of this nature is that of the Cooperative African Microform Project (CAMP), which is based at the Centre for Research Libraries (CRL) in Chicago (Center for Research Libraries, 2003). However, as far as we could determine, nothing on anything like the same scale as the microfilming projects has so far been undertaken in respect of digitization of African materials. Digitization projects seem to be mainly confined to relatively small specialised collections. A typical example is Africa Focus, a project of the University of Wisconsin-Madison Libraries, which provides the general public with access to a digitized selection of images and sounds from the collection of the University's African Studies Program (University of Wisconsin-Madison, 2003). An international project worth mentioning in this context is the Slave Trade Archives Project, initiated by UNESCO within the framework of its Memory of the World Programme, and funded by the Norwegian Agency for Development Cooperation (NORAD). The project aims to promote the preservation of original archive materials relating to the slave trade, and to make these accessible through digitization. Of the 17 developing countries currently envisaged as participating in the project, 15 are in Africa (UNESCO, 2003).

So much for digitization projects being undertaken outside Africa. To what extent are documentary heritage digitization projects being undertaken in Africa? One of the more significant projects in sub-Saharan Africa is DISA: Digital Imaging Project of South Africa (DISA, 2003). As its first phase, DISA's participating institutions digitized some 40 anti-apartheid periodicals of the three decades 1960-1990. Capacity building was emphasised. Training workshops were held to ensure that new skills in the use of advanced technology could be developed, and a good foundation has been laid for future cooperative projects "in building digital collections of national importance" (Peters & Pickover, 2001). In 2002 funding was obtained for a second phase of the DISA project (DISA, 2003).

Searches on the Internet show that there are many other African web sites that include digitized documentary heritage. However, in most cases, the digitized content forms a relatively small part of the sites. An interesting example is the African Resource Service. This is a for profit enterprise based in Nairobi, Kenya, and launched in 2000, with the mission to "aggregate and offer to the world an exhaustive resource of African content and to provide access to it..." Access is by subscription, which is subsidized in the case of African academic institution, and free in selected public libraries in Africa. (African Resource Service, 2003). Currently, the heritage content is somewhat limited, but includes digitized photographs, speeches and books by political leaders (Karani Nyamu, pers. comm., 21 May 2003). Various South African organisations present digitized documentary heritage on their web sites. These include the African National Congress (2003), the District 6 Museum (2003) in Cape Town, the South African Labour History Project (2002), South African History Online (2003), and the University of the Western Cape-Robben Island Mayibuye Archives (UWC, 2003). Generally, the digitization scene is one of

relatively small, isolated projects. Further projects are mentioned by Hart (2002:66-69), Limb (2002) and Watkins (2001).

II Main ethical concerns

It is clear that technology allows the digitization of Africa's heritage and enables universal access to a body of knowledge that was for a long time not only inaccessible but also viewed by some as inferior and of no value. Now, for the first time, it is possible to achieve the aim that was formulated in 1966 in UNESCO's Declaration of the Principles of International Cultural Co-operation, to:

...spread knowledge, to stimulate talent and to enrich cultures...and to enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and to contribute to the enrichment of cultural life (UNESCO, 1966).

It can be argued that the process of spreading knowledge as enunciated in the UNESCO declaration is a process that should be coordinated and controlled by the world community. But on what basis can this be done? Regardless of who coordinates and controls, there are some serious moral and legal concerns. Taking the case of African heritage, these are:

- Who has access to this information? Will African scholars for example be able to access this information for free?
- What control will the originating community have over their information once it is digitized by others?
- Will originating communities be identified as the original creators of their cultural heritage and will they have the right to control access and non-disclosure of certain categories of their cultural heritage, for example sacred knowledge artifacts?
- To what extent will the global rules on intellectual property be able to protect this common heritage of Africa and prevent it from becoming exclusive, private property? Will the international intellectual property regimes be able to maintain the balance between private ownership and common heritage of the people of Africa?
- Will the people of Africa be fairly compensated for the use of their knowledge by others and what incentives will there be for them to make available their body of knowledge to the rest of the world?

The need for an acceptable global moral foundation

What will then be an appropriate moral approach that not only reflects on these issues, but also provides guidelines on how to control and regulate the process of digitization of Africa's documented heritage? It is indeed difficult to identify an acceptable universal foundation for moral judgments. As Singer (1979:10) formulates it: "What could bind the developed and the developing world into a voluntarily common set of moral principles?" Habermas (1993:57) correctly states that a norm is only justified if it is equally good for each person (and one can add: *group*) concerned. That is why he favors a communicative, intersubjective ethical approach to identify a common norm to enable global moral reasoning.

Human rights as a global moral foundation

It is argued, in line with Hamelink (2000), that human rights, and specifically information rights, provide the best universal moral framework to reflect on these issues. Not only have they since 1948 been accepted (and were they reaffirmed in 1993 in Geneva) by most democratic nations in the world, who respect them and build them into their legal systems, but they also provide cross-cultural validity. They further enhance core principles such as not harming people, respecting the freedom and property of people, and recognizing the equality of all.

Some of these rights, such as the right of freedom of opinions and expression (art 19), the right to education (art 26 [1]), to property (art 17 & art 27), to privacy (art 12), and freedom to participate in cultural life (art 27), have a direct bearing on access to and use of information. It is therefore possible to distinguish information-based rights in the same manner as political and cultural rights are distinguished.

Information-based rights are normally articulated as the right of access to information, the right to communicate (freedom of expression and opinion) as well as ownership rights (Britz, 1998). There is, however, an important pre-condition for the acceptance of information ownership rights as one of the bases for universal moral reasoning regarding the digitization of Africa's documented heritage. These rights have to accommodate communal rights of groups. Hamelink (2000:163) for example proposes that "...legal rules on intellectual property should not exclusively focus on the individual inventor but should also recognize the communal production of knowledge and protect this accordingly". The problem is that Africa does not have a legal tradition of "owning and protecting" information. The concept of 'immaterial legal objects' does not exist in Africa's legal terminology. There is rather a widespread belief in Africa that ownership of information is not vested as a property right but that knowledge, as a benefit to all, must be shared freely with one another (Boonzaaier 1990). This philosophical approach to information contributed to the misuse and exploitation of indigenous knowledge by many developed nations. Individual intellectual property rights did not succeed in protecting the cultural heritage of Africa.

The problem is thus that communal rights are seldom articulated in the design of intellectual property regimes. The philosophical roots of human rights (Locke, Hobbs, Mill) are mostly articulated in the idiom of Western individualistic traditions. Hamelink (2000:161) demonstrated that, although individual human rights imply respect for communities, this does not suffice. See for example the UN declaration of Human Rights, article 29: "Everyone has duties to the community in which alone the free and full development of his personality is possible". But this will still not offer the necessary protection for the digitized cultural heritage of Africa.

Communal and individual information rights

Bearing this pre-condition of information ownership rights in mind, we propose the following communal and individual information rights that can serve as a moral foundation regarding the protection and promotion of Africa's documentary heritage:

- The right of freedom of access to information that is needed to exercise all other basic rights. This is a positive right and correlates with the duty to share knowledge with others to enable them to exercise their basic rights (Britz, 1998:11). As such it is an expression of the moral principle of autonomy, which enables individuals and groups to shape their own lives.
- The right of freedom of expression. This implies the freedom not only to hold and express opinions, but also to seek and receive information from others. It therefore links to the right of access to information. As Woodward (1990:10) puts it: "... the [right of access] to the intellectual efforts of others and a right to distribute one's own intellectual efforts". This right is an expression of both the negative and positive liberty of individuals and groups – the right not to be interfered with (negative) and the right to express opinions and receive information (positive).
- The right of individuals and groups to own, use and control information they have generated themselves.

These rights, expressed in a legal framework, can be seen as an articulation of the moral principles that we are all equal, that we have the freedom to generate, share and own information and also that the exchange of this information must be on a fair basis. They also reflect the idea that knowledge belongs to the common heritage of humankind and as such must be shared. To articulate this idea Habermas (1989) refers to the 'public sphere'. The public sphere is defined as a platform that must be created to share knowledge and create mutual understanding. The French philosopher Lévy (1999) uses the phrase 'collective intelligence' to enunciate this notion of global mutual sharing of knowledge.

III The need for a social contract based on social justice

Information-based human rights thus form the basis for a universal moral reasoning pertaining to the digitization of Africa's documented heritage. However, how can these rights be protected and enforced in a fair and just manner? The difficulty is that legal and economic systems that regulate global information distribution are in many instances not fair, inclusive and egalitarian. Agreements on the sharing and distribution of information are not always based on the rights of peoples but more on contracts and licenses, which in many cases can lead to the economic exploitation of the individual and communal creators of information. Market players do not always take into account the interests of the other party. It seems that the primary interest is mostly self-interest. This can pose a serious threat to the processes involved in the digitization and control of Africa's documentary heritage.

How can the digitization of the African documented heritage then be fairly regulated, protected and promoted in the world of globalization? Two things must happen: the big international information role players, who have the means and technology to digitize large volumes of information, must recognize the collective rights of others and refrain from acting purely in their own interest. Secondly, a moral sensitivity must be developed to the principle that the rights of others are important and that the unfair treatment of others is unacceptable. This is a deeper rooted moral obligation than just applying a legal structure of intellectual property legislation.

Social justice as a normative tool

What is proposed here is a social contract based on social justice. The reason for choosing justice as the moral tool lies fundamentally in its definition: to give a person or society what they deserve. As a moral notion it was founded by the Greeks and applied by the Romans and it has become *the* universal norm to regulate our societies (Rawls 1973). As Maguire (1986:3) puts it: “Justice is the first assault on egoism” and “The alternative to justice is social disintegration because it would mean a refusal to take others seriously”. Without justice the rights of others cannot be protected and respected. It is both a legal and a moral concept. As a moral tool to judge and regulate society it must also act as a guideline with regard to the legal application of information rights.

A four-part typology of social justice is put forward that can be used as a normative tool for evaluating and realigning information ownership rights. The four types are:

- Commutative justice. As an expression of justice, commutative justice requires “fundamental fairness in all agreements and exchanges between individuals or social groups” (National Conference of Catholic Bishops, 1997:42). Applied to the digitization of the documented heritage of Africa it implies amongst others that the digitization of the African heritage cannot take place without the consent and fair compensation of Africans. This economic application implies that there must be fairness in transactions that secure the digitization of African heritage. This is specifically with regards to the payment of royalties and other forms of compensation – not only to individuals, but also to communities. The economic gain must also not be at the expense of the people who created the information. African scholars must be able to gain access to their own cultural heritage on a fair basis. This implies free or affordable access.
- Contributive justice. The second category of justice is contributive justice (National Conference of Catholic Bishops, 1997: 42). As an expression of social justice it entails that individuals have a moral responsibility to be active in society. Their contribution can take on many forms. In the present context this implies that knowledgeable people in Africa should make available their vast wealth of knowledge to the benefit of human kind. This will ensure this knowledge will become part of the intellectual commons that is open to all. Hamelink (2000: 154) articulates it as follows: “All peoples and all nations have the duty to share with one another their knowledge”. In this way African people can contribute to the creation of new knowledge. It is however not only individuals who have an obligation to society. Society has a duty to facilitate these individual activities without impairing their freedom and dignity. If applied to the archiving of African documentary heritage this means that society has the obligation and duty to put the infrastructure in place to ensure that individuals and groups have the means at their disposal to create and distribute knowledge, and that they receive a fair economic return on their efforts. In practical terms it implies the following: The developed nations of the world have a moral obligation to make available modern technology to assist in the digitization of the African documented heritage. There must be moral and economic incentives for people of Africa to make available their cultural heritage (Lavoie, 2003). Contributive justice also suggests that there must be an effective legal infrastructure in place to protect the cultural and economic interests of the peoples of Africa.

- Distributive justice. As the third category of justice, distributive justice ties in closely with contributive justice. It takes as its starting point the fair and equal distribution of the benefits of a particular society (for example power, income, wealth and knowledge) to its members (National Conference of Catholic Bishops, 1997: 42). Applied to the digitization of African documentary heritage it implies that Africa must distribute its documented heritage wider than its originating culture. This distribution must, however, not be done at the expense of the people themselves. It must be based on fairness and ensure that the African people will be able to access their cultural heritage once it has been digitized.
- Retributive justice. Any of these forms of justice would be hollow without an enforcement component. Retributive justice can be seen as such a normative instrument. It refers to the fair punishment of those who have violated society's accepted principles of justice and the clear articulation of what constitutes non-conforming behaviour (Lipinski & Britz, 2001:18). As such, it focuses on the social control of harm to humans. This form of justice acts as an important guideline for the protection of Africa's documentary heritage in digital format. It supports society's punishment of those who trespass intellectual property laws by either stealing or damaging Africa's digitized heritage.

IV Broad principles

Based on this moral framework the following broad principles are proposed from which more specific guidelines can be derived:

- Recognition of the cultural and moral rights
The process of digitization should be carried out in such a way that it preserves the integrity of the culture of African people. The culture should not be used and displayed in such a manner that might harm or misappropriate the culture from which it was derived, for example by distorting or trivializing it for purposes of commercial advertising. African people must still have the right to a proper identification of their cultural heritage. This implies the right to be identified and recognized as the creators of their heritage. These cultural and moral rights should also include the right of communities. This would imply that the communities (and by extension, scholars from the communities and countries concerned) should have some say on which aspects of their documentary heritage are digitized and what the priorities of such digitization programs should be. (This would satisfy requirements of contributive justice and distributive justice in respect of the right of ownership of information.)
- Recognition of ownership rights
African people have a right of ownership in their documented heritage. This right must extend beyond the present intellectual regimes to include groups and communities. Individuals and groups must be able to prevent ownership of their heritage from passing by default into the hands of those digitizing the heritage or funding the digitization program. Ownership rights should also make provision for the communities themselves and scholars and students from the countries concerned and from Africa generally, to access and use their digitized documented heritage (This would satisfy requirements of commutative justice and contributive justice in respect of the right of access to information and the right to own information.)

- Recognition of economic interest
African people must have recognized economic rights over use and exchange of their digitized documented heritage in the market place. If there is any economic benefit derived from the use of the digitized documents the original creators thereof must have a fair share in the commercial transactions. (This would satisfy requirements of commutative justice in respect of ownership of information.)
- The duty to share knowledge as a common heritage
African people have a moral obligation and duty to make their documented heritage available and accessible to humankind. Digitization serves as a very effective instrument to accomplish this. Those who possess the means (technology and other resources) to enable this have a responsibility to ensure the success hereof. One implication of this is that, through training and technology transfer, African communities and institutions should be placed in a position to undertake digitization programs themselves, or at least to participate in them as partners. (This would satisfy requirements of contributive and distributive justice, in respect of the right of access to information and the right of freedom of expression.)
- The right to control.
African people must have the right to control their own documented heritage. This implies, amongst others, the right to decide which categories of information can be made available to the public and which not (for example sacred information), and even to withdraw access to material already digitized before. (This would satisfy requirements of commutative justice in respect of the ownership of information.)
- Protection mechanism
Legal protection mechanisms must be in place to protect these rights of African people. (This would satisfy requirements of retributive justice.)

Conclusion

In the introduction to this paper a number of questions were asked concerning the selection, beneficiaries and users of African documentary heritage once it has been digitized. Although one response might be to cite or devise a set of practical rules or guidelines, we have chosen to problematize the issue of digitization of African documentary heritage by raising a number of broader ethical concerns and elaborating the need for a globally acceptable moral foundation. Human rights and specifically communal and individual information rights provide such a moral basis, but the protection and enforcement of these rights do not follow automatically. A social contract based on social justice is needed to ensure respect for, and protection of, the rights of weaker parties such as African communities that are creators and custodians of documentary heritage. On the basis of the four categories of social justice, it is possible to formulate guidelines that set out broad principles and can be applied to the practical questions stated at the beginning of this paper.

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