To: Zo Devine  
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Humboldt State University

From: Susan Gehr,  
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Re: Humboldt State University, California State University, Federal, State policies, protocols or regulations HSU must comply with or should consider regarding the use, access, ownership of the unpublished primary Native American cultural knowledge resources housed at HSU's Center for Indian Community Development (CICD)

Date: February 7, 2011

Executive Summary

This report reviews and analyzes HSU, CSU, State, Federal, Tribal and professional policies, regulations or protocols that concern the extensive body of recordings, linguistic databases, publications and manuscripts that have been created and distributed by the Center for Indian Community Development in the course of nearly four decades.

These policies, including a 1993 policy concerning the distribution of the CICD recordings, and all the practices that have gone on based on them, have allowed for the sharing of CICD educational resources with tribal communities without controversy for nearly twenty years.

Introduction

This report primarily addresses the approximately one thousand audio recordings created or collected by Dr. Ruth Bennett during her over thirty years of staff employment with the Center for Indian Community Development, but the policies and the recommendations apply to other Native language materials developed by the Center.

First, this report will describe Dr. Bennett's employment status with the University, her job responsibilities for the purpose of identifying their status in Humboldt State University's Intellectual Property Policy and the records management policies of the California State University system.

This report will also discuss what Humboldt State University might consider based on the copyright status of the recordings, best practices in the archives community and traditional law that pertains to some of the recordings.

This report will also suggest some alternatives concerning what Humboldt State could do with these recordings based on their status.

Dr. Ruth Bennett
In her more than thirty years as a Humboldt State University employee, Dr. Ruth Bennett held two job titles with the Center. Starting in 1981, Dr. Bennett served as Assistant Director for Services to the Indian Community.

Dr. Bennett’s job responsibilities included making these recordings, processing them for use in curriculum and for sharing with tribal communities served by the Center for Indian Community Development. According to her former supervisor, Dr. Victor Golla, Dr. Bennett did give copies of tapes either to the speakers themselves or to other tribal language workers as part of her work (personal communication, January 12, 2012). And while there wasn't a written policy concerning sharing copies of the recordings, Dr. Bennett did make copies of tapes or excerpts of the tapes upon request.

From the position description dated June 16, 1981, "Assistant Director, the Center for Community Development,

"1. The development of bilingual education programs and program supports, under the supervision of the Director, to maintain and augment the Center's American Indian Languages & Literature Program. This will include the design or compilation and implementation of curricula and related textbook and instructional materials appropriate to instruction of, and in, those American Indian Languages indigenous to contemporary tribal clients of the Center."

Original language research with speakers of the languages would have needed to have been done in order to develop curricula, textbook and instructional materials and accounts for many of the recordings made while Dr. Bennett worked with that job description.

In early 1993, Dr. Bennett was given a new job title (Researcher/Technical Writer) and a new job description. Though Dr. Bennett's job title and responsibilities changed, they continued to involve the recording of and producing finished products based on the Native language recordings she made as part of her job responsibilities.

**Ethnographic Transcriptions Policy, Center for Indian Community Development, February 1993**

This CICD policy was developed in 1993 and documented in the Center's 1993-1994 annual report. This policy statement specifies the process governing the availability to the public by the Center duplications of transcriptions, recordings for which transcriptions had been made, and digital copies. Any transcriptions of tribal language materials are to be done in the currently accepted writing systems of the tribe or currently in use by people of the tribe. This section of the policy does state that the Center will make reasonable efforts to consult with people knowledgeable in the language regarding the accuracy of transcriptions.

Section V of the policy, Sensitive Materials, states that materials of a nature likely to have a negative impact on a person or persons will be withheld from public distribution. This material is withheld at the discretion of the Center for an appropriate period of time. The policy does not specify the types of material that would be considered sensitive. In the case of Native language and cultural recordings, the sensitive materials could include such topics as injurious gossip,
cultural information that is restricted even within the tribal community (such as information meant only for ceremonial leaders), or information that might lead directly to a village site (thus exposing the site to looting).

The Center has operated under this policy since 1993 without controversy from the recorded participants, the Center, or the tribal communities.

**About the recordings**

The recordings were made primarily of four local tribes, Hupa, Karuk, Tolowa and Yurok and in a variety of settings and a variety of speakers in the late 1970s to the early 2000s. Dr. Ruth Bennett was the recordist of most of them.

Brief summary of contents included in the Hupa, Karuk, Tolowa and Yurok tapes
- elicitations of sound systems of the languages, vocabulary or grammar
- traditional stories
- traditional songs
- cultural descriptions
- community language classes and meetings
- school-based language classes
- conference sessions
- oral histories

Some of the language speaker / cultural consultants were contracted by the University as tribal language teachers. However, the contracts did not specify the making of recordings as a duty nor did they have any clauses pertaining to gifting their copyright to the University.

With other recordings, Dr. Bennett was the only participant with University affiliation, and products from those sessions have already been published in the absence of written documentation.

In one example, the Center's 1989 annual report documented that linguist William Bright "visited the areas twice during the year on CCD (Center for Community Development) invitation and worked with Nancy Riley, Julian Lang and others to gather new material and to confer with teachers and Tribal members on strategies for Karuk language preservation (p.2)."

There were five tapes in the collection that are likely associated with those visits (tape numbers 863-867). Some of these recordings have already been published by the Karuk Tribe, including "Violet's Dog," which was published by the Karuk Tribe in the 2003 booklet "Now You're Talking Karuk / Talking Together, A Conversation" and on Bright's own website (http://americanindianonline.com/bright/violet%27s_dog.doc).

Those and a number of other CICD recordings have already been used, republished and had derivative works used in language revitalization efforts without controversy. There may be recordings in the CICD collection that may need to be reviewed by subject-matter experts prior to distribution. Fortunately, CICD's 1993 Ethnographic Transcriptions Policy accounts for this need in Section V. Sensitive Material.
Generally, as per the 1993 policy, traditional songs were not generally transcribed, thus generally not available for duplication. In 2009, Lois Risling, Hupa tribal member and former director of the Center for Indian Community Development, reported that there were recordings in the CICD collection of traditional Hupa songs where the singer stated that he was going to sing Old Man Risling’s song. That is a culturally appropriate way of stating the owner of the song, but she didn’t know if the singer had permission from Old Man Risling to sing the song, and she wondered if it would be appropriate to let that tape be heard (L. Risling, personal communication, 2009).

Value of the recordings
The recordings have educational value to the Hupa, Karuk, Tolowa and Yurok tribal language communities as language documentation and cultural documentation. Consultations with the recorded speakers themselves, the speakers' direct descendants, bodies of language advocates and tribal language programs are points of consultation.

The recordings also have sentimental value to the descendants of the language and cultural consultants, who seek out similar archival collections to hear their relatives speak.

As historical records of a University program, the materials have historical value to Humboldt State University. Furthermore, the vast majority of this collection is well within the scope of the University Library, whose special collections has an emphasis on the Native peoples of northwestern California. The recordings could also be a valuable component of a Native Languages Institute.

HSU Intellectual Property policy
Defining the terms of Dr. Bennett's employment as staff (as opposed to faculty or student employment) and that her job description did include the creation, processing and distribution of these recordings is important to understanding where the products of her work are defined in Humboldt State University's Intellectual Property Policy and in Executive Order 1031, the CSU Records/Information Retention and Disposition Schedules.

California State University Executive Order 644 delegates the regulations concerning intellectual property to the individual CSU campuses (http://www.calstate.edu/EO/EO-644.pdf). Humboldt State University's current Intellectual Property Policy says the following about the creations of University staff:

"a. The University owns the copyright to works created by University staff in the course and scope of their employment. (EM:P09-03 Intellectual Property Policy, Section II, A, 3.)"

Written Releases and Copyright Status
Based on current United States copyright laws, current best practices in oral history, linguistics and archives management dictate that written releases of copyright be obtained from both the recordist/interviewer and the narrator/interviewee (Neuenschwander, 2009; Newman, 2007). Based on Humboldt State University's Intellectual Property Policy, the University holds the recordist/interviewer half of the copyright. However, because there is no written documentation
of the language and cultural consultants' transfer of copyright, the possibility exists that some uses of the recordings will be problematic unless the University consults with the recorded speakers themselves, the speakers' direct descendants, bodies of language advocates or tribal language programs as appropriate.

According to past CICD directors, employees and consultants, it was not the norm for written releases to be obtained for recordings. However, with nearly all the recordings it was clear from comments made by the speakers that they are aware of and in approval of the recordings. The speakers were aware that the recordings would be listened to in order to create educational curriculum with the goal of learning the language and teaching the language to future generations. And there is already the uncontroversial precedent of selections of these recordings being published by the Center and by the tribal language communities.

There are at least two schools of thought on how to proceed with these legacy language recordings in the absence of written releases.

In the 1998 text *A Legal Primer on Managing Museum Collections*, Malaro wrote, "...the mere fact that a deed of gift is not on record does not mean there was not a valid gift...If the museum had a routine way of noting gifts, it may be more sensible to leave that system in place and note in the museum records that before such and such a date, this was the system of record (p.205)."

In a study of the Doris Duke American Indian Oral History Program interviews held by the University of Arizona, Repp (2009) stated that the University retroactively sought written deeds of gift from either the interviewee or the descendants of the interviewee.

Repp (2009) also cited Shopes' 2007 research on legal and ethical issues in oral history, which stated that publishers "may sometimes accept the institution where the interviews are held as the de facto owner...(but that)...an interview is understood as a creative work owned by the interviewee."

Both Repp (2009) and O'Meara & Good (2010) suggest seeking releases retroactively, sooner rather than later. Another of the universities in Repp, the University of South Dakota, did get written releases when the interviews were conducted, and the existence of the written releases has allowed for wider release of the materials.

Repp noted that it was unfortunate and inconvenient that written releases were not obtained for past recordings, but that the process of negotiating releases in the current era allows space for cooperation and honorable intentions between the university and the tribal communities.

**Institutional Records or Personal Papers?**

Mark Greene, Director of the American Heritage Center, University of Wyoming and the 2006-2008 Vice President/President-Elect, Society of American Archivists, presented a paper on the "Access to Institutional Archives and Manuscript Collections in U.S. Colleges and Universities."

Greene made the distinction between institutional records such as the records of governing boards, administrators and committees and the private papers of faculty in a research capacity (as
opposed to an administrative capacity) and of student organizations. Research papers can be
made subject to donor-imposed restrictions.

"In both public and private universities the papers of faculty members in their teaching and
research capacity (as opposed to their sometime activity as administrators) are almost universally
considered private papers rather than institutional records. As private papers, faculty collections
and student organizational records can be subject to donor-imposed restrictions..."

What about staff research? Is it an institutional record of the university because it is a staff work?
Or is it more like faculty research, which can be made subject to donor-imposed restrictions?

The answers to these questions might give the University and the tribal communities more
latitude in applying best practices such as the Society of American Archivists' Code of Ethics
(http://www2.archivists.org/standards/code-of-ethics-for-archivists) and the Protocols for Native
American Archival Materials (http://www2.nau.edu/libnap-p/protocols.html).

**Records Management and Institutional Records**
If the recordings are university records, then Humboldt State University policy to Implement the
Systemwide Records/Information Retention and Disposition Schedule – Executive Order 1031
may apply.

"The objective of the executive order is to ensure campus compliance with legal and regulatory
requirements while implementing appropriate operational practices and processes for
Records/Information Retention."

Under this policy, it appears that the recordings would most likely fall under section 11 of the
records retention schedule, "Institutional Records / Information." Under this section of the
practices" is the basis for disposition of these records. The guidance for these records would be

"Retain until no longer of administrative value and then transfer to campus
archives or the appropriate records management authority to determine if the
record(s) have historical value and will be archived."

It isn't entirely clear whether staff research of the nature of recordings, linguistic databases
curricula and other publications of CICD would fit into the records retention schedule, whether
as personal research papers or institutional records but its information value is primarily
historical. If the Center for Indian Community Development could no longer house the
collection, it could be transferred to the Humboldt Room of the University Library for processing
and providing appropriate access based on best practices of such organizations as the Society of
American Archivists (2005) and such guidelines as the Protocols for Native American Archival
Materials (http://www2.nau.edu/libnap-p/protocols.html).

**Suggestions for Future Care**
Given that the University doesn't have written release of copyright from the interviewees,
unilateral decisions on the treatment of the recordings are likely to be more problematic than any
decisions the University and the speakers, their descendants and the tribal communities develop together.

According to David Nathan, the director of the Endangered Languages Archive at the University of London's School of Oriental and African Studies (personal communication, January 11, 2012), the trend these days is to make the language materials available, but to also give language consultants, their descendants and/or the tribal communities the latitude to request that culturally sensitive materials be treated appropriately.

Neither CICD nor the University can truly put themselves in the position of determining cultural sensitivities of the materials - that expertise rests in the tribal communities. It would ultimately protect the university to allow the tribal communities to identify and address the cultural values of the recordings. One way this could be done is by convening the think tank proposed by Lois Risling. Tribal language advocates, tribal representatives, and university representatives including invited scholars and information professionals such as archivists and librarians could meet to consider these very crucial issues.

Another possibility is that the recordings could be repatriated to the speakers, their descendants or the speaker community's language programs. In this case, the University would not be in the complex position of determining access and rights. However, their long-term preservation might be uncertain, as none of the tribes currently have an archive on the level of the Humboldt Room. Also, as the work of a University employee, the recordings and a portion of the rights to their contents do belong to the University.

A third possibility is that no decision could be made on the recordings, and they would remain largely inaccessible to the tribal communities who are seeking to revitalize their languages. The possibly sensitive materials would be protected, but to the detriment of the tribal languages who would benefit, and in limited cases, such as the 1989 recordings during William Bright's visit, have already benefitted from access to historic documentation of their languages.

However, the existence of the recordings and databases are widely known in the tribal community, and keeping them inaccessible could be detrimental to relations with the tribal communities.

If the University kept the recordings, they would stay with the Center for Indian Community Development until such time that CICD no longer needed them for their work. Given their historical value to both the University and the tribal communities of northwestern California, they could be placed in special collections such as the Humboldt Room. In the spirit of collaboration, a process could be instituted by which researchers, most likely either tribal language workers or descendants of language consultants on the tapes, could be given access to the tapes and give feedback. This could allow the University to provide access with greater confidence or restore any restrictions as needed. This might be most in keeping with the University's vision (2003) of being exemplary partners with tribal nations and making a positive difference in its role as a steward of learning.
References


http://americanindianonline.com/bright/violet%27s_dog.doc


http://www2.archivists.org/sites/all/files/08_Mark_GREENE.pdf


