

Pursuant to two letters published in the last issue (40[1]) addressing Julie Hollowell and George Nicholas' article (39[4]) concerning intellectual property, the authors have provided a response below. Their article was commissioned after concerns were raised (39[2]) about the publication of Croes' et al.'s initial article about Sauvie Island (38[4]).

We welcome this opportunity to reply to comments from Eirik Thorsgard and Dale Croes on our article, "Intellectual Property Issues in Archaeology: A Case from *The Midden*" (*The Midden* 39[4]). We had not anticipated the strong reactions the article generated from both Thorsgard (a representative of the Confederated Tribes of the Grand Ronde [CTGR]) and Croes (a practicing archaeologist), and are grateful for this chance to clarify our intentions in writing that piece and to apologize for any misunderstanding.

As stated in our brief article, Eric McLay, ASBC President, asked us to comment on intellectual property issues that editors of *The Midden* and members of the ASBC might want to be aware of in response to concerns voiced by David Lewis, manager of the CTGR Cultural Resources Department, about photographs of Grand Ronde representatives, cultural materials, and sites located on tribal lands that had been published in an earlier issue in an article written by Dale Croes, John Fagan, and Maureen Zehender. Our purpose was to use this case as an example of the kinds of intellectual property issues that can emerge in relation to archaeological publications—more specifically, regarding photographs of work taking place under the jurisdiction of tribes or First Nations or on their traditional lands. Our intentions, which we reaffirm here, were clearly stated:

"We take this opportunity to analyze and comment on the situation with the goal of identifying problem areas and promoting positive practices that will hopefully inform approaches to similar situations in the future. Our intention is to learn from this as an informative case study, not to criticize any of the parties involved" (emphasis added).

Intellectual Property Issues in Archaeology

Julie Hollowell and George Nicholas

Our objective was thus not to analyze the relationship between the CTGR and Croes specifically, but rather to use the case in a didactic way to elicit questions that anyone publishing archaeological data might want to ask themselves. Nor was it our intention to provide answers to these questions for this particular case or to conduct further research on its specifics. If this had been the case, we would have posed our questions directly to the involved parties so they could clarify their positions. In a sense, this is precisely the particular context that Thorsgard and Croes have provided in their responses.

Both Thorsgard and Croes refer to our lack of research relating to the specific case, but again our questions were never meant to be directed toward seeking further information about the Grand Ronde case itself, but rather to illustrate the kinds of questions and contextual information that, indeed, need to be considered by any of us who find ourselves in a similar situation. Thorsgard's commentary also takes us to task for the peripheral nature of our questions about land jurisdiction. His discussion of the history and implications of ceded lands is useful and informative, and is the very kind of factual knowledge that should be considered in any situation when making decisions about what to do and whom to involve.

The same holds true for Croes' reiteration of the collaborative nature of his work, which was not at issue or being challenged by us. To the contrary, we are very appreciative and supportive of the collaborations that Dale Croes has long been engaged in, as well as Eirik Thorsgard's review of the commitment the Grand Ronde have made to working with Dr. Croes, and vice versa. We know first-hand how challenging (and rare) truly collaborative relationships are—both of us

have a long history of working with First Nations (contrary to Thorsgard's comment on "[our] lack of knowledge regarding Indigenous communities").

Thus, our questions on these various topics were intended to highlight the significance of intellectual property issues in all that we do, as well as to point out their often slippery nature and tendency to raise (sometimes unsettling) questions about access, benefits, and control. Our personal experiences have shown us that, regardless of one's best intentions, commitment to collaboration, or sense of personal accountability, sticky situations that challenge us to rethink practices and protocols are bound to occur, and indeed ought to be embraced as a catalyst for positive change in research practice.

Issues relating to intellectual property are increasingly being raised in the realm of cultural heritage. They are clearly present in the realm of archaeological publications, whether in regard to the use of images of individuals, sites or artifacts; protocols for review, access, and ownership of reports by descendant communities or the public; or questions about who benefits, and how, from published articles and books. Learning from other cases is one way to better understand what the issues are and how to address them successfully, as both *The Midden* and Dr. Croes have illustrated in this situation.

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