

Archives, communities, and linguists: Negotiating access to language documentation

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Overview

- Case studies: Conflict over access to language archives at Berkeley
- Protocols for indigenous archival material: a model for community collaboration
- Deeds of gift: linguists identify access issues in archival material
- Four lessons

Background

- One of us: a professionally trained linguist who is now a professional archivist
- Another: a professionally trained linguist who is also (but without professional training) the curator of an archive

Our experience: language documentation; observations of language archives; practical experience in Californianist linguistics and archives

Case studies

Some obstacles to successful collaboration at two Berkeley language archives:

Berkeley Language Center: audio recordings since c. 1950
(<http://www.mip.berkeley.edu/blc/la/index.html>)

Survey of California and Other Indian Languages: fieldnotes since c. 1950
(<http://linguistics.berkeley.edu/survey/catalog>)

These archives' collections are fully digitized (BLC) or digitization is in progress (SCOIL); digital content is accessible on the internet.

All cases involve languages of California and the western US, languages that are either highly endangered or no longer spoken. Indigenous California was diverse linguistically, with very many languages that had relatively few speakers.

Two digital access models for legacy archives

In these archives material was deposited informally, usually without agreements.

- **Survey of California and Other Indian Languages:** fieldnotes

Open access assumption: No restrictions

Users must register to view digital images and must agree to terms of use

- **Berkeley Language Center:** audio recording

Conservative access assumption: No online access or copies made until the depositor is contacted and permits access and copies

To listen to digital audio users must agree to terms of use (no registration)

Sample types of archival collection in these cases

- Fieldnotes from the 1950s, comprising many notebooks recording elicitation sessions and documenting texts; the language now has no native speakers
- Audio recordings from the 1950s, totalling over 10 hours (grammatical, lexical, phonological elicitation; a few texts) with over 100 distinct content segments; the language now has no native speakers
- Audio recordings recordings from the 1960s, totalling over 25 hours (texts, elicitation) with over 100 distinct content segments; the language is now severely endangered

Problem cases are mostly of three types (**A-C** below):

- **A** failures of planning (by linguists or archives)
- **B** linguists seek to restrict access to archived materials
- **C** heritage communities seek to restrict access to archived materials
- **D** for comparison — cases involving explicitly identified cultural property

Case A1: a linguist deposits recordings of a now severely endangered language; these are effectively the only recordings of this language

- The linguist left the discipline and could not be reached to give instructions as to the use of the material s/he collected.
- The heritage community sought access for language revitalization purposes.
- Due to an excessively conservative access policy (restricted access until the depositor says otherwise), no access was granted for about a year until it was decided that liberal access rules will apply when depositors are inaccessible.

Case A2: a linguist had very extensive fieldnotes documenting a language that now has no speakers

- The linguist hadn't published for years (and didn't do language revitalization work) but was still working on the material.
- The heritage community sought copies of the fieldnotes for its revitalization program.
- After the linguist passed away, the linguist's heirs deposited the fieldnotes with other professional papers in a university archive located far from the heritage community, and with no special focus on language material.

Case B1: a linguist deposits recordings of a now severely endangered language

- After a personnel change in the tribal language program, there was a new language program officer whom the linguist believed was disrespectful. (The new program officer replaced an earlier program officer whom the linguist had worked well with.)
- The linguist did not want audio recordings to be copied for the new program officer unless s/he asked the linguist directly.
- The new program officer believed that the language/heritage community has a right of access to its language material and that the linguist was unreasonable, and did not want to have to ask the linguist for access.
- This took over 2 years. Eventually the linguist let recordings be copied.

Case B2: a linguist deposits recordings of a now severely endangered language

- In the context of a language revitalization project, the linguist had a substantial financial dispute with the heritage community.
- The linguist does not want anyone to be given copies or online access to the recordings, and is immune to persuasion.
- The recordings are still inaccessible.

Case C1: a linguist deposits recordings of a language that now has no speakers

- The linguist permitted copies to be made for any non-commercial purpose and open online access.
- A dispute arose between the heir of the person recorded and others who assert heritage community rights.
- The person recorded worked with many linguists over many years and there is no evidence that s/he was reluctant to disseminate language information. But it was 40 years ago and there are no agreements or other documentation. These recordings are of lexical elicitation and contain no texts.
- The recordings are still freely available and there are some bad feelings.

Case C2: a linguist deposits recordings of a language that now has no speakers

- The linguist permitted copies to be made for any non-commercial purpose and open online access.
- Two groups assert heritage community rights; neither has a particular family connection with the people recorded.
- The language program officer in one of the two groups wanted to restrict any access by the other group. Not everybody in the community felt this way, but the language program officer did.
- The recordings are still freely available and there are some bad feelings.

Case D1: a linguist deposits recordings of a now highly endangered language as spoken in community A

- The recordings are mostly songs (various traditional genres); most community members consider these culturally sensitive.
- The language revitalization program office from community B, speaking a very closely related (or perhaps identical) dialect, seeks copies of the recordings.
- After consulting representatives of community A, the linguist decides that *individuals* who are associated with community B but also have heritage connections to community A may have copies of the recordings, but that the recordings should not be made for community B language office.

Case D2: the Berkeley Yurok Language Project offers a large online database of lexical, text, and audio data (<http://linguistics.berkeley.edu/~yurok>)

- Some speech genres — songs, ceremonies (early 20th century recordings), and certain narratives — are regarded in the community as culturally sensitive or as personal property.
- For genres regarded as sensitive or personal property, and in the few cases where a person recorded prefers this, recordings are not available online.
- The wide accessibility of audio and other data is seen by most community members as helpful in language learning and language revitalization.

Lessons from our case studies

- Have a consistent overall strategy, have clear deposit agreements in place, and understand what will happen when those who may change access rules are no longer accessible — this **will** happen, sooner or later.
- Though cultural property issues loom large in theory, most actual problems do not involve cultural property (except in the possible sense that all information about a language is the cultural property of the descendants of its speakers). Most actual problems involve “turf disputes.”
- Linguist turf disputes: Linguists seek to restrict access by heritage communities or individuals within heritage communities.
- Heritage community turf disputes: Communities seek to restrict access by others who assert heritage community rights. (Archives are not well suited to adjudicate such disputes; language archives usually let linguists decide.)

Two sets of protocols advocate for:

- Community ownership rights
- Community privacy rights
- Protection of oral tradition in the absence of a fixed format
- Moral rights

**Aboriginal and Torres Strait Islander
Library and Information Resources Network Protocols**
(<http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au>)

“Libraries, archives and information services will ... develop ways, including the recognition of moral rights, to protect Aboriginal and Torres Strait Islander cultural and intellectual property.”

“There is information that is restricted, that our children cannot learn about, there is information that is restricted even to adults, there is information that is of a secret or sacred nature, that many people have no knowledge of or access to. That knowledge is only there for certain people to have access to.”

— *Galarrwuy Yunupingu, 1986*

Protocols for Native American Archival Materials

(<http://www2.nau.edu/libnap-p/>)

“Recognize that the conditions under which knowledge can be ethically and legally acquired, archived, preserved, accessed, published, or otherwise used change through time. Some materials may have been collected or later restricted by a donor in contravention of community rights and laws or of contemporary federal laws or professional ethics. In all of these cases the rights of a Native American community must take precedence.”

“For Native American communities the public release of or access to specialized information or knowledge — gathered with and without informed consent — can cause irreparable harm.”

“Privacy rights extend to groups in some situations.”

Elements of a deed of gift

- Identify the donor and the recipient repository
- Title and description of the donated records
- Transfer of legal ownership and physical custody of the records
- Transfer or retention of intellectual property rights (including copyright)
- Explanation of rights that the archive has under copyright law
- Explanation of rights to display the material in an exhibit or use it for publicity
- Explanation of access restrictions
- Explanation (and preferably copies) of agreements with consultants
- Provisions for separated or discarded materials
- Any amendment to the agreement must be signed by both parties

Four lessons

- Access to archival material should by default be open, not restricted.
- Concerns about access are framed in terms of copyright or cultural property, but often neither are applicable. This may change as groups increasingly define language as their cultural property.
- Donor agreements are a linguist's opportunity to place restrictions on access to archival material or to identify culturally sensitive material.
- If access restrictions are necessary, they are best framed in consultation with heritage communities.