ABSTRACT

Much of the anthropology of indigenous copyright and other forms of intellectual property focuses on the ways in which indigenous understandings of reproductive entitlement diverge from the Euro-American or Western property values perceived to be enshrined within national and international legislation. I argue that in Vanuatu, local chiefs and carvers have successfully merged international and indigenous reckonings of entitlement within their understanding of copyright, simultaneously capitalizing on and blurring commonly understood conceptual, economic, and sociopolitical divides. When the people of Vanuatu are asked what copyright is, they invariably refer to the carvings and carvers involved in the ritual hierarchies of entitlement of the region of North Ambrym. I take this locally drawn analogy as my starting point to argue that concepts of "copyright," and, indeed, copyright legislation and enforcement, may be mutually constituted between spheres of exchange and understandings of entitlement, as much from the bottom up as from the top down. [copyright, indigenous intellectual property rights, materiality, Vanuatu, Ambrym]

Copyright in context:

Carvings, carvers, and commodities in Vanuatu

We have made a special provision in the Copyright Act so that even if you don’t produce anything in the present day, everything will still be passed down to you through your clan. The Act will protect your clan, and your family. The Copyright Act covers all kastom, we made sure that everything would be covered. ... In the past we couldn’t always protect kastom because there was no law to protect us. Now, we have a law to invoke, we can get lawyers and go to court. We had the laws of the chiefs before, but now we have the law of the white people as well.

—Ralph Regenvanu, speaking on Vanuatu Radio, January 24, 2001

I

n the speech from which the remarks above are taken, Ralph Regenvanu, the director of the Vanuatu Cultural Centre (VCC), explains the importance of the newly passed Copyright and Related Rights Act (hereafter Copyright Act) to a group of carvers invited to the VCC to discuss the potential effects of national copyright legislation on their work. As well as stressing the power of copyright legislation to restrict the production and circulation of specified traditional imagery, Regenvanu emphasizes the potential of national legislation to extend endlessly the domain of indigenous tradition (most broadly translated in Bislama, the national pidgin of Vanuatu, as kastom) into the realm of the nation-state and beyond, into the global domain of "white people." This description of the local resonance of international copyright to islanders living in the Republic of Vanuatu (see Figure 1) may be understood as a counterpoint to the ways in which copyright is more generally discussed: as the legalization of a particular property relation between individuals and their creative productions emergent in the context of European print capitalism, and not necessarily applicable in all cultural contexts (see Coombe 1998a for an excellent contextualization of Euro-American thinking about intellectual property).

I argue here that "copyright," as an international legal concept, has a long history of entanglement with diverse understandings of entitlement and that the formation of national copyright legislation is able to link
multiple constituents and contexts. In 1999, the Vanuatu State Law Office began drafting a copyright bill that, once passed by the Vanuatu parliament, would partially fulfill the requirements necessary for the country to join the WTO (see Wright 2001). The bill was modeled in part on the acts already in existence in Australia and New Zealand, using generic UNESCO and World Intellectual Property Organization (WIPO) guidelines with the addition of sections pertaining to "indigenous knowledge and expressions." Kastom entitlement in Vanuatu has long been enforced in local contexts by traditional structures of hierarchy and through the medium of village meetings and local councils of chiefs—local judiciaries that function with variable levels of state sanction (see below and Rousseau 2004:chs. 6, 8; cf. Lipset 2004:65–66). As well as bringing international legislative expectations into Vanuatu and opening the door for Vanuatu's participation in a global economic forum, the Copyright Act marks one of the few times the state has acknowledged traditional entitlement within an internationally recognized framework.

In December 2000, the copyright bill was made, without major change, an act of parliament (see Republic of Vanuatu 2000). Although the act has yet to be gazetted and is, therefore, not currently enforceable, since its passing, the language of copyright legislation has increasingly been incorporated into disputes around the ownership of kastom imagery and the rights to profit from it. As I will show, the national law courts are a spectral presence within such disputes. In addition to the threat of a hefty fine and a year in prison, the mention of the "rules of custom" within the Copyright Act legally validates alternative mechanisms for enforcing copyright, which range from the strictures of traditional ritual hierarchies to the threat of sorcery and even violence.

In this article, I scrutinize copyright in the context of these multiple perspectives, moving from the village to the nation and from the nation, passing through the domain of generic legislation, back into the village. I argue that ni-Vanuatu have, over a lengthy period of time, strategically drawn an analogy between highly specific local entitlements and more international notions of copyright to assert significant economic and political agency in local, national, and international domains of exchange. I use the term analogy here because it presupposes both similarities and differences between compared entities. Contrary to popular thinking, IPR legislation may be understood as a zone in which the relations between rights, resources, and political authority may be configured to accommodate diverse systems of reproductive entitlement under the unifying rubric of international law, in turn, creating a space that may affirm local difference and extend local agency. This may be seen both in the attempts of legal analysts and scholars to make international IPR regulations cross-culturally applicable by promoting the concept of "sui generis" (preexisting) copyright systems and their integration into highly generic legislative orders (e.g., Janke 2003) and in the ways that chiefs from North Ambrym in Vanuatu successfully connect their own mechanisms of enforcing reproductive entitlement to the concept of "copyright." Such dynamic interconnection between cultural contexts is facilitated, I argue, by the very nature of intellectual property itself: a form of property that forces a rethinking of conceptual boundaries around the material and the immaterial, around agency and entitlement, in the context of the dynamic political economy that emerges from these very negotiations (see Boyle 1996).

Thinking about IPR in cultural context

Recent theoretical and legislative vigor has shown how understandings of property at their broadest are continually expanding and being rethought in comparative context, demonstrating, as Rosemary Coombe notes, that property "is constituted of flexible nexi of multiple and negotiable relationships between persons and things that continually shift to accommodate historical recognitions of prior inequities and current social needs." Nevertheless, despite an efflorescence of literature reconsidering property in more general terms, anthropological discussions of intellectual property—a category that emerges at the vanguard of changing understandings of human creativity, value, and materiality—seem unable to escape from a dichotomous contrast between indigenous political economies, in which exchanges are socially embedded, and the free market, in which exchange is alienating. Talk about IPR still frequently falls into discussions punctuated by references to "gifts" and "commodities" and often presupposes a fundamental difference in the ways in which exchange relations and property rights are understood in regions such as Melanesia and in the West. For example, Simon Harrison comments, Western intellectual property law seeks to define products of human creativity that can be alienated from their creators and exchanged for other commodities in a system concerned with establishing the relative values of the objects exchanged. In Papua New Guinea, the ownership of intangibles does not necessarily include the possibility of alienation, and the exchange of intangibles does not determine their value.

Other examples of this dualistic perspective can be found in the work of anthropologists (e.g., Harrison 1993, 2000; Leach 2000, 2003) and activists (e.g., Posey and Dutfield 1996; Smith 1999) as well as policy advisors, lawyers, and other commentators working both in the Pacific and beyond (e.g., Chapman 2001; Janke 2003; Lindstrom
The use of dichotomous models of property as ciphers for geographic, political, and conceptual differences by anthropologists and others is sometimes at odds with the thinking of international bodies such as UNESCO, WIPO, and the WTO, for instance, in its Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement. Such organizations have advocated the drafting of generic legislation throughout the world to protect local IPR internationally and to promote a globally consensual political economy around their exchange and enforcement. The pertinence of Western conceptions of ownership, property, and rights, however, is often questioned in indigenous contexts (e.g., Brown 1998; Kalinoe and Leach 2001; Smith 1999; Sykes 2001), and the validity of drawing up legislation to formalize such concepts in indigenous or non-Western settings has been challenged from a number of different directions (e.g., Posey and Dutfield 1996). Michael Brown, for example, questions “how a UNESCO-style bureaucracy would further the interests of indigenous peoples by codifying their knowledge in what would have to be a Byzantine series of regulations” (1998:203; see also Leach 2003) and, in a more recent work, is critical of the reverse, asserting that the self-delineation and formalization of indigenous rights undermines the development of a “cultural commons” within global property relations (Brown 2003).

Although an emphasis on cross-cultural differences in property relations may emerge as a response to very real diversity and from a good-hearted desire to ensure that indigenous and other minority or disempowered communities are not exploited within the global exchange arena, I argue that discussions that remove indigenous peoples from the framework of international legislation may, in fact, undermine the very participation of such groups in the negotiation, contestation, and appropriation of processes of defining intellectual property and asserting IPR at the most generic level. If indigenous (and other) players lose out in the global franchising of local resources, they do so not necessarily because they conceive of property, and participate in property relations, in a completely different way than the directors of multinational corporations but, rather, because of long-standing, often unethical political relationships of inequity and exploitation. The view of copyright, therefore, that I develop throughout this article assumes that indigenous persons may share an interest in consolidating IPR on a global stage and that they are capable, when permitted, of incorporating local modes of transacting rights and resources into more generic documents and vice versa, in turn, effecting the constitution and, more importantly, the enforcement of international law locally. To fully understand these relationships one needs to examine ethnographically the actual constitution of IPR laws and understandings, looking, for instance, not only at how indigenous and international descriptions of copyright might differ but also at how they may be productively linked.

Thinking about IPR necessitates an understanding of who gets to decide which meanings are upheld by law and which entities get to become commodities. I argue, however, that the very nature of intellectual property breaks down some of the conceptual divides indicated above. One need only examine how IPR have been discussed and managed by international organizations to see that what James Boyle terms “the strangeness of all intellectual property” (1996:18) may also be read as a provocative critique of understandings of property. Although property theorists have conventionally struggled with the diversity of relationships between entities and entitlements (and subsequent moralities), intellectual property overtly synthesizes materiality, knowledge, value, and entitlement, almost making the “rights” in the term intellectual property rights unnecessary. For instance, the TRIPS definition of IPR as “the rights given to people over the creations of their minds” (World Trade Organization n.d.) emphasizes that intellectual property emerges at the very moment when the links between entitlements and ideas are consolidated, yet this definition cannot and does not attempt to tidily fix the boundaries between persons and things. Recent discussions about genetically modified material, for instance, continually expand understandings of what kind of entities may be patented and of how these patents may be upheld (see Boyle 1996; Pottage 2004). In this fluid context, not surprisingly, many people fear local rights will be swept away as official (often corporate) definitions of property continually expand. At the same time, I argue that this very fluidity may also, if permitted, provide an avenue for the assertion of significant grassroots as well as corporate political agency.

Although commentators such as Brown (2003) and Adam Kuper (2003) may become alarmed when indigenous-rights movements attempt to appropriate international remits concerning intellectual (and cultural) property from pluralist democracies, I argue that IPR legislation itself is as able to incorporate difference and to assimilate diverse understandings of entitlement as it is to be exploited to demonstrate geographic and conceptual differences. For example, the current claim by six Maori tribes before the Waitangi Tribunal in Aotearoa–New Zealand (WAI 262), demanding recognition and protection of the cultural and intellectual heritage rights in relation to indigenous flora and fauna and related traditional knowledge, customs, and practices, reconfigures traditional connections to both indigenous cosmology and the environment and challenges the delineation of a pluralist cultural commons, explicitly using the language of IPR (see Solomon 2001). In Vanuatu, the incorporation of the legal category of
copyright into traditional modes of establishing political and economic authority and the extension of this connection back into the international art market has accomplished a similar synthesis. Ralph Regenvanu’s very positive description of the potential utility of copyright legislation in Vanuatu, in the epigraph of this article, demonstrates that many Melanesians are as interested in understanding the cross-cultural similarities between systems of entitlement as they are in exploiting their differences.

**Analogies between copyright and indigenous entitlement**

I define *copyright* very broadly here as official injunctions and restrictions that establish legitimate entitlement for individual or incorporated entities to circulate and profit at any particular moment from the material reproduction of specified forms. The success of ni-Vanuatu in using copyright to control the marketplace for their customary material (a pragmatic aim of establishing broad intellectual property regulations) lies in the success of a long-standing analogy that I argue, over time, has become self-fulfilling.

Although the term *copyright* may have originally entered Vanuatu from afar, the analogy between ceremonially sanctioned entitlement and copyright (or its Bislama transliteration *kopiraet*) is drawn as much by locals as it is by outside observers. During my stay in Vanuatu, the drafting and passing of the Copyright Act provoked a great deal of general discussion about the market and economic entitlement. Contemporary artists wondered if they could be penalized for depicting kastom events or images in acrylic paint or tapestry. Other people talked about copyright as a way to consolidate their ownership of diverse forms of practice, for example, to control the performance of the Pentecost land dive ceremony, a ritual precursor to bungee jumping, outside of its prescribed time and location (a long-standing issue of contention; see, e.g., Jolly 1994). At the same time, nearly everyone I talked to, from representatives of the Vanuatu State Law Office and Vanuatu National Museum, to dealers, carvers, and contemporary artists, drew an analogy between copyright and the ritual injunctions concerning making and circulating kastom carvings from the region of North Ambrym, in north-central Vanuatu. In the following section, I unpack the conceptual foundations of this analogy, arguing that it has enabled a profound assimilation of the language of IPR into local discussions of entitlement. One effect of the process of analogy, I argue, is to continue the work of IPR in shifting conceptual boundaries. Thus, one might ask what happens to the sui generis system when its participants start to conceptualize local entitlements explicitly as copyright? And what happens to an understanding of copyright when one increasingly thinks about it in the context of indigenous cosmologies and assertions of entitlement?

**The graded societies of north-central Vanuatu: A copyright system?**

The analogy between IPR and kastom reproductive control in Vanuatu is seemingly straightforward: a mapping of the entitlements apportioned within a diverse series of male rituals of status acquisition in the northern and north-central regions onto the idea of copyright (and vice versa). In Vanuatu, these ceremonial systems are conceived as a coherent regional complex, generally called “nimangki” in Bislama and “graded societies” by anthropologists (e.g., Allen 1981b; see Figure 2). Both analysts and participants have long used ethnographic information about the male graded societies to exemplify a more generic indigenous discourse of entitlement. This discourse is increasingly configured in reference to copyright and is having a growing effect on lawmakers, cultural advocates, and artifact traders, indigenous or other.

A rich history of ethnographic investigation into the graded societies exposes a series of local exchange systems that have often defied rigid documentation. Allen 1981a, 1981b; Blackwood 1981; Bonnemaison 1996; Deacon 1934; Huffman 1996; Jolly 1991, 1994; Layard 1928, 1942; Patterson 1976, 1981, 1996, 2002; and Rivers 1914, among others, have all described the diversity of ceremonial transaction that constitutes customary male status in the region. Despite intense local diversity, Michael Allen highlights some general characteristics of the graded societies common to each location: Each hierarchical complex consists of a number of ranked grades achieved by men and, occasionally, by women, through the ritual sacrifice or exchange of tusked boars, the purchase of insignia and services, and the public performance of elaborate ceremonies. Members of grades are marked by sets of rights publicly represented by emblems, figures, apparel, and eating and sleeping proscriptions (Allen 1981a:24). The circulation of pigs, yams, images, songs, dances, and titles between persons, villages, and islands through broad networks of ceremonial exchange collectively enhances the status of individuals, bringing them progressively closer to the spirit world of the ancestors by the acquisition of ranked names. Kirk Huffman describes this as a “‘copyright’ system [that] recognizes certain individuals, groups or areas as the proper owners of cultural items, the rights to which can be purchased, sold and resold over large areas in the perpetual spiritual and material drive upwards and outwards towards increased social height, prestige, power and influence in the world of the living and the world of ancestral spirits” (1996:182–183). Through such exchanges between the ancestral world of the spirits and the hierarchical world of mortals, the graded societies are a prime mechanism for the distribution of entitlement, creating a political economy that allocates control over local resources—which range from the prime ritual currency of pigs to yams,
Figure 2. The distribution of the graded societies. Taken from Jolly 1991:57. Reproduced with the permission of Cambridge University Press.
knowledge, and, increasingly, cash—to the highest-ranking men. Access to all of these resources, whether tangible or intangible, is embodied profoundly in the material culture of the graded societies, exemplified in this article by the Maghe of North Ambrym. The anthropomorphic carvings that publicly manifest each man’s individual grade (see Figure 3), the vertical slit-drums associated with a wide variety of rituals (see Figure 4), and smaller models of both, made primarily for the market (see Figure 5), produced by men from North Ambrym, have come to be archetypal embodiments of ideas about kastom and copyright, and their customary owners have become authorities on both the allocation and enforcement of these kastom copyrights nationally.15

The analogy that links these particular artifacts to the rules of copyright stems from the relationship between the carver and the owner of the right to reproduce designs that, in turn, embody such entitlement. A carver must pay, through various types of ritual practice and, increasingly, with money, for the rights to both produce (carve) and circulate (sell) kastom images. Owners of designs may commission carvers to reproduce them, retaining ownership nonetheless, and skilful carvers may pay for the rights to carve and even sell designs but do not necessarily gain the stature that such designs embody. Complex relations of patronage, hierarchy, and customary authority, therefore, are embodied both in the social form of the ritual complex and materially within the very form of the carvings themselves. This unity of material and social reproduction also facilitates the analogy between kastom entitlement and copyright, the most material form of intellectual property.

In North Ambrym, and increasingly throughout Vanuatu, the term copyright, or its Bislama transliteration, kopiraet, has passed into local parlance to describe the form of such entitlement within the graded societies. When asked to define copyright more specifically, North Ambrym chiefs explicitly elaborated the concept as being about maintaining the hierarchies of rank and title within the graded society and as a method of consolidating local definitions and uses of kastom rights in both local and nonlocal contexts.16 Chief James Tainmal of Fanla described the purpose of copyright as “blong traem meksua se ol man oli go streit blong rank” [to ensure that all men stick to their graded society rank] (author interview, Fanla village, June 19, 2001). As I discuss below, rather than being “like” or merely analogous to copyright in any Euro-American sense, copyright in Vanuatu has been incorporated into the ways in which rights from the graded society are discussed and implemented.

A case in point: Chief Willie Bongmatur Maldo and his five-faced drum

The case of Chief Willie Bongmatur Maldo’s copyright claim is a clear example of how copyright is used locally as an overarching idiom to link indigenous and (inter)national entitlements, to expand local prestige into wider spheres of influences, and as a method of consolidating the customary authority needed, in turn, to gain such broad political and economic entitlement.17 Chief Willie’s claim is based on the analogy between copyright and local entitlement that I outlined above. In building his case, Chief Willie shows the potential of copyright to extend local agency outward and illustrates how men and kastom from North Ambrym have emerged as crucial arbiters of the meanings of copyright in Vanuatu.

Chief Willie is currently one of the most famous chiefs in Vanuatu. Now in his late sixties, he was born in the Presbyterian village of Likon, West Ambrym (Bolton 1999:4). His family moved to North Ambrym after the destructive eruption of the volcano Mount Benbow in 1913. Despite his western origins, Chief Willie claims an allegiance to the north—a famed place of kastom leaders. Bolstered by this regional grounding, Chief Willie’s life has been one of political engagement with processes of nationalization and external development. Such mediation lies at the heart of his family history: his grandfather, Wurwurnaim, was a returnee from the Queensland sugar plantations and had converted there to Christianity, and his father, Simon Solip, was a Presbyterian evangelist and teacher (Bolton 1999; author interview with Chief Willie, Port Vila, November 7, 2001). Whereas many villagers in the interior of North Ambrym held on to a “pagan” identity and resisted converting to Christianity well into the 1970s, Chief Willie was well equipped to become a part of the newly nationalized culture of Vanuatu—which held both kastom and Christianity in high regard. A leading member of the Presbyterian diocese, he began his political career as district assessor under the Anglo-French Condominium government. In 1972, he founded the North Ambrym Local Council, then a mediator between village and colonial government, now a body exercising the chiefly power of kastom as the North Ambrym Council of Chiefs. Subsequently, he became a member of the New Hebrides National Party (later the Vanua’aku Party), which, headed by Father Walter Lini, led the country to independence in 1980. Chief Willie was also a founder and the first president of the Malvatumaui (National Council of Chiefs, an advisory body that may be consulted by the government on kastom issues) in 1977.

When I met Chief Willie in 2001, he was preoccupied with a dispute that had emerged over a material gesture that he had made to reauthenticate not only his own status but also that of the nation: Some years earlier, as then leader of the Malvatumaui, he had commissioned the carving of a North Ambrym drum, extravagantly decorated with five faces, as a gift to the UN commemorating the incorporation of Vanuatu into that organization.

Schooled in the protocols of the graded society of Ambrym, the Maghe, Chief Willie was aware that strict
Figure 3. Chief Gilbert Bongtur, from Melbera village, North Ambrym, June 2001, alongside a carving embodying his graded society rank of Maghenehewul. The wood used for the carving is black palm or tree-fern. Photo by H. Geismar.
Copyright rules governed the production and use of this drum. He publicly invoked an image of five faces that his grandfather had carved into a coconut tree, representing the five times his ancestor had paid for the right to his Maghe title, Mal. He also approached the family in North Ambrym who possessed the right to carve a five-faced drum and asked them if he could purchase the copyright from them to make such a drum. They agreed, for a fee of 80,000 vatu ($755) and some full-circle tusked pigs (this account is drawn from Rio 2000:7 as well as from Chief Willie himself).

Despite a seemingly harmonious payment and transfer of rights and a public ceremony with an exchange of mats, pigs, and money in Port Vila (in the auspicious presence of the prime minister), the legitimacy of the drum was soon called into dispute. Eventually, the man to whom the payment for rights had been made—as a member of the line originally in possession of the right to carve five-faced drums—initiated a kastom court case challenging Chief Willie’s genealogical entitlements and, in turn, his political authority. The drum was never sent to the UN, remaining in the storeroom of the VCC. The repercussions of this dispute were still preoccupying Chief Willie in 2001 when I interviewed him at his home next to the Central Presbyterian Church in Port Vila. With the passage of the Copyright Act, he was preparing for the passing of the dispute from kastom to national courtroom, where he would be able to consolidate his claims in front of the highest legal authority in the country.

During one of our meetings, Chief Willie dictated his genealogy to me so that I could transcribe it and print it out as a document for him to use as evidence in any legal case. The document also incorporated drawings of the drum made by a relative of Chief Willie. Although Chief Willie may not have used the word copyright within his genealogy, his narrative was delivered as a lengthy copyright claim explicitly using the idioms and language of entitlement emanating from the Maghe graded society. I reproduce it here to highlight the power of the locally drawn analogy between these two zones of entitlement:

My name is Chief Willie Bongmatur. I want to tell you the history of my family, alongside my own history. This history goes back a long way, and it concerns the...
... history of our kastom, as well as the history of the nation of Vanuatu to the present day.

... Now I will tell you my laen [line, genealogy]:

Maltantanu (another name for him is Malrangumo, Malbongnoun), he was a great Abu [ancestor] of ours. Maltantanu took Mal five times. The first time he was Maltantanu, then he became Malkiki (which means the mother of all Mals), then he was Malametu (which means old Mal), after that he was Malten (a Mal from Malakula), then he was Malsanavuhul (which means that he had taken Mal ten times, although he had really only taken Mal five times). All of these rights meant that he had the right to carve a big drum with five faces. The son of Mal was Wuruwuruineim, and he had three brothers, their names were Wigimal, Ragaragamal (whose son was Joel, and his two sons were Alili and Pipir) and Bongwakon who was the straight Abu [grandfather] of me, Chief Willie.

I too have killed pigs five times. The first time, I took the name Mosari (a name that my uncle Ramel from Likon gave to me), for this I paid twenty full circle tusker pigs and two turtles, because he is a chief of the ocean. Then I took the name Malbaru (which means twice Mal that I bought from a tawien [cousin or in-law] from Ranon), for this I had to pay two pigs. Next I took the name of an Abu [grandfather or elder] from Fonah village, Rahemol. I had to pay twenty pigs together and take one dead pig, one live pig, red mats and food to the ceremony. Then I took the name of a younger Abu from Lingol, Ramelbong, and I had to pay one dead pig and one live pig. This was the kastom for the drum with five faces. I followed these old men from the past. After this, I took the name

Figure 5. Model carvings of a many-faced slit-drum and graded society figure, made for sale by Bule Tainmal, Fanla village. Photos by H. Geismar.
Molban, which means a chief who carries title. And when my father died, I killed pigs again and took the name Rahetwip, which means the mother of all chiefs, because at this time, I was the leader of all the kastom chiefs of Vanuatu. The 1979 census said that there were 2,200 chiefs in Vanuatu, and this was the time that I was writing the constitution.

My Abu was Mal five times, I too, have killed pigs five times, and I also have five medals: the Queen’s medal, Independence Medal, First Class Medal (tenth anniversary of the country), the Constitutional Medal, and the Twentieth Anniversary medal.

This entire narrative must, following Chief Willie’s explicit intentions, be read as a copyright claim. Chief Willie went on to assert that because of his genealogical connection to men with high ranks in the graded society and his own national stature (which he gained as well as—some say in lieu of—his own active participation in the Maghe), he did not need to buy the right to commission the drum to be carved; the payments he had made were “soemaot respek nomo” [simply to pay due respect] to an older relative. His own series of names in the Maghe consolidate his legitimacy within both a local and a national context: Each of his five names is matched by a national title; each emblem of Maghe (and face on the drum) matched by a medal, which may be hung around his neck like a pig’s tusk, highlighting the vital materiality of title and entitlement (see Figure 6). For Chief Willie, copyright is about staking multiple claims using the most powerful tools available, balancing both his national responsibilities with the hierarchical conventions of the graded society and the villagers to which he was (almost) equally answerable.

I propose following Chief Willie’s own logic to start to understand the ways in which copyright is understood and defined in Vanuatu. That the dispute involving Chief Willie’s drum was explicitly described by all concerned as a “copyright” dispute highlights that sui generis understandings of entitlement, emanating from North Ambrym, may be framed with more national understandings of political authority and economic entitlement in mind. The link between Maghe entitlement and copyright is not, therefore, a superficial convergence. In the following section, I describe how this analogy or convergence has developed over many decades between the entitlements afforded by the Maghe society and exchanges within international and national marketplaces, which in the present has come to be known as “copyright.”

A brief history of an analogy: The graded society and the market in Fanla village

I have so far unpacked the conceptual underpinnings of the analogy between copyright and indigenous entitlement

Figure 6. Chief Willie Bongmatur Maldo wearing his five medals, Port Vila, July 11, 2001, and a drawing by him, which links the structure of authority in the graded society (Maghe titles are listed in the lower left-hand side of the drawing) to the political structure of the colonial nation-state. Photos by H. Geismar.
within the graded societies in Vanuatu, focusing on the Maghe of North Ambrym. A long-standing pragmatism underpins this analogy: one rooted in market interest, the negotiation of authority, and the emergence of a national political economy based on the relationship between the two. IPR play a vital role in mediating between political authority and economic entitlement within intercultural spheres of engagement. The analogy and the jostling for authority and entitlement that it engenders have a lengthy history, one that has emerged most publicly within one North Ambrym village, Fanla. Today, Fanla villagers underscore their dominance in copyright claims using their genealogical connections to some of the highest-ranking men in the region, legitimating access to the richest material fruits of the Maghe and, thus, the greatest access to the profits of the international art market.

Fanla (population ca. 200) is situated a little inland from the sea on the steep hills of North Ambrym. It is one of the most feared places in Vanuatu, primarily because of the strong continuing association with magic and sorcery—in short, with the most feared and powerful forms of kastom—that it holds in the minds of ni-Vanuatu from other islands (see Patterson 1976; Rio 2002; Tonkinson 1981). Fanla village is also internationally renowned for its production of carvings. Figurative drums from Fanla are in the collections of the Metropolitan Museum of Art in New York City, Le Musée Quai Branly in Paris, and the University of Cambridge Museum of Archaeology and Anthropology as well the Vanuatu National Museum. The use of their image on the 500-vatu note also suggests that slit-drums, large and small, are considered both highly lucrative commodities and important markers of local and national identity. For many years, villagers from North Ambrym have exported their carvings both nationally and internationally, selling directly to dealers working in Port Vila, New Caledonia, and even as far away as the United States. Large drums currently fetch 100,000 to 200,000 vatu (approx. $880 to $1,760) and are popular with dealers and collectors around the world. Small model drums sell for 500 to 1,500 vatu (approx. $4 to $13), depending on innovations in design and on their size. Models of Maghe carvings sell for 3,000 to 6,000 vatu (approx. $26 to $79), again depending on their complexity of form and size. As Mary Patterson (1996:261) has commented, even full-size drums are increasingly “decorative” rather than “functional,” their visual aesthetic dominating their acoustic capabilities.

Chief Tainmal and his son Tofor (both now deceased) are legendary village characters, famed throughout the archipelago for their lavish grade-taking ceremonies, high rank, and insubordination to the Condominium authorities and feared for their status as powerful klevas, or “sorcerers.” Within the diverse documentary history of North Ambrym, Tainmal of Fanla emerges as a prominent figure in the development of the public face of kastom in North Ambrym and as a savvy developer of a locally based international market for carvings. Today two of his sons are village chiefs and are concerned with maintaining the viability of local cultural resources, ranging from the sporadic performance of dances for tourists to the almost continuous cottage industry of carving (see Figure 7).

Rio (2000:3) comments that he finds no record of the commercialization of carving in North Ambrym before the 1960s, a period that marked the beginning of increased air travel and the more systematic development of tourism in Vanuatu. Patterson (1976:31) reports that by the time of her fieldwork (early 1970s) a large proportion of the wealth of the North Ambrymese had been acquired through the sale of artifacts to Europeans. The money raised by the sale of artifacts, she reports, was usually invested straightforwardly in Maghe rites. Charlene Gourguechon, who spent over two years in the archipelago in the early 1970s in the company of photojournalist Kal Muller and photographer and filmmaker Jacques Gourguechon, gives an account of the artifact business in Fanla village. Her description of the most powerful chief in the region, Chief Tofor, highlights how his ascendance was partially contingent on the profit he made by selling “imitation traditional objects: miniature statues and drums, mass produced masks” (1977:236):

A large part of his revenue comes from “custom.” . . . As a highly graded man, he also received a good bit of money from ceremonies such as the nimangki. He has discovered, moreover, that he has a product to sell to the Europeans: art objects. . . . Gone are the days, he declared, when you could buy a statue from him for a bottle of rum and a scrap of calico! Now he knows what things are worth. Operating like a professional, he even offered a large drum as a present to the Queen of England and to General de Gaulle, and ever since, he’s been able to sell his drums at unthinkable prices to international art collectors.

In addition to reports by anthropologists and tourists, the bourgeoning market for kastom artifacts was also much commented on by visiting officials of the Anglo-French Condominium. All accounts highlight a close correlation between profiting from the market and the status achieved through the grade-taking ceremonies. The issue of copyright (as it has come to be conceptualized in Vanuatu: legitimate access to profit and attendant political authority by the assertion of stratified indigeneity and reproductive entitlement) started to infiltrate public discourse during the late 1960s and 1970s. On February 2, 1967, Vanuatu national radio broadcast the following report:

In North Ambrym, the custom chiefs have now agreed that the local craftsmen may make only those artefacts
which are appropriate to their grade in the custom society. The chiefs have found that with the increased business in artefacts, some of which are being exported, some local craftsmen have been making masks, images and slit gongs of a type which should only be made by people of a higher rank. Now, anyone breaking the new regulation will be fined. The senior custom chief in North Ambrym is Chief Tainmal of Fanla village whose duty it is to levy these fines. [Leach 1967]

From as early as 1967, Fanla villagers dominated the carving market on the basis of their claims to kastom authority, which, in turn, restricted who could make and sell particular objects. The word copyright was not often used at that time, but, as international market interest grew, ni-Vanuatu found there was an easy convergence between this long-standing understanding of restriction and the concepts increasingly promoted by the WTO, WIPO, and UNESCO within their generic models of national legislation. From the start, Condominium officers felt it their responsibility to maintain the “free” aspects of the market as well as the “integrity” of the “art” tradition without releasing political authority into the locality. In a letter dated March 1967, the British District Agent wrote that

I have been following with much interest the developments with regard to the making of artifacts in the North Ambrym area which first came to our notice with the report broadcast by Vila Radio that the custom chiefs had laid down certain rules regarding manufacture of handicrafts. When Tom Layng [a British government agent] visited Fanla recently he was told by Chiefs Tainmal and Tofor that the French District Agent had told them that the arrangement whereby people would be fined if they made an artifact of a higher degree than the rank to which either they or their fathers are entitled in the Namangge [sic] was illegal. No doubt Boileau [the French District Agent] was technically speaking right since the chiefs of North Ambrym have no authority to exercise control in these matters and particularly to levy fines. [Wilkins 1967]
Such remarks intimate that both British and French authorities accepted the legitimacy of connecting customary to market entitlement but were more deeply concerned about the infiltration of local political power and entitlement into the domain of Condominium authority. Despite the coherent legislative initiative that had emerged clearly on Ambrym, both the French and British district agents were reluctant to accept it in Port Vila. They both concluded that some sort of protective system was needed to maintain quality control and “artistic integrity” (rather than to merely enhance economic profit) but that such jurisdiction should not be in the hands of locals—even though by all accounts it evidently was (see British District Agent 1968; French District Agent ca. 1967).

During the period of the Anglo–French Condominium (1906–80) some high-ranking men gradually developed national identities as “chiefs” and were viewed by the colonial authorities as useful mediators between the government and the locality (Bolton 1999:3–4; see also Lindstrom 1997). Although many commentators have noted that high rank in the graded society does not necessarily give the bearer broader political power (e.g., Allen 1981a:107–108, 1984; Blackwood 1981:39; Bonnemaison 1996:203; Jolly 1991:211–212), having a high rank was and is useful for becoming a “chief” and vice versa, rank itself being an exploitable resource. The evolving commentaries on reproductive and market entitlement in North Ambrym demonstrate the ways in which ideas about (intellectual) property rights, which in the present day have come to be called “copyright,” emerged as a negotiation of political and economic authority between chiefs, and between chiefs and the nascent nation-state. Within the growing tension between local and national ideas about how copyrights should be implemented, the mechanisms and authority of the graded society proved the most effective means of controlling the marketplace. Despite Condominium efforts, fierce competition over access to the limited market for carvings resulted in the local implementation of a system of indigenous controls that put economic profit in the hands of the highest-ranking and, hence, most powerful men. It is this system, in turn, that yields great influence on understandings of copyright legislation in the present day.

At the time of my stay in Fanla village (2001), the passage of the Copyright Act and the increasing awareness of the economic potential of the legitimate production of artifacts had led to an escalation of tensions related to making and selling kastom carvings that highlighted the resonance of copyright within the local political economy. According to Fanla villagers today, any man can make a business carving and selling drums by paying a pig and 6,000–8,000 vatu (approx. $53–$70) to a family member who already holds such a right. This entitles one to sell one- or two-faced drums (Knut M. Rio, personal communication, July 5, 2002). More complex designs fall under stricter rules that hinge on the tracing of customary entitlements like those of Chief Willie, through a mixture of personal practice and family inheritance.

During my stay, two competing men were engaged in a dispute over rights to carve Maghe figures. One man, whom I will call Sam, and his family had embarked on frenzied production of carvings to fill a container that was to be shipped directly from North Ambrym to Nouméa at the instigation of a French dealer. Other villagers were concerned about the monopoly of such a lucrative enterprise and charged that Sam did not have the right to carve and profit from the small drums and figures because he had no genealogical rights to the images he was making. Moreover, that he had recently converted from Presbyterianism to Seventh Day Adventism (which overtly rejects all forms of kastom and, most importantly, forbids the eating of pork and the drinking of kava, thus, excluding all church members from the bisnis pig of the Maghe) was an even clearer indication that he had no personal right to use kastom for economic gain. At a public meeting of the region’s council of chiefs to ascertain the legitimacy of his copyright claims, Sam had sworn rude at council members. They wanted to put a halt to the shipment of artifacts until the matter could be resolved and Sam could be punished by the local kastom court, probably by being made to pay a compensatory fine. A man from the opposing side dictated a letter to me and asked me to carry it back to the VCC, in the hope that the director would intervene and stop the shipment of objects before it left port for Nouméa. Seemingly in response, two of this man’s pigs were killed in his gardens.

As far as I am aware, the chiefs of Fanla were unable to block this particular shipment from setting sail. As a result of this dispute and others, however, the North Ambrym Council of Chiefs called a meeting at which all of the “chiefs” (in this instance explicitly calling themselves “high-ranking men”) of the region convened and formally transcribed the Maghe genealogies of their families. Thus, the rights that specific ancestors had paid for in the past could be profitable to those who could trace descent from those ancestors, even if the descendants were no longer active members of the Maghe. The council intended its document both to ensure that each individual’s family rights to carve became public knowledge and to serve as the basis for an enforceable form of copyright legislation. The meeting of chiefs was much discussed on Radio Vanuatu, and, at the time of my visit to the island, the manager of the only ni-Vanuatu-run handicraft store in Port Vila, Handicraft Blong Vanuatu, was waiting for a copy of the document to be sent to her so that she could adjust her buying policies accordingly, cross-checking vendors with the names on the list. She commented,
Copyright will give people back their sense of kastom. I really want every island to write down what belongs to them, and give me a copy so that I can know what is right to buy and what is wrong, what their kastom rights are, what children have the rights to make, what family line has this right or that. It is no good if I buy something and afterwards someone says they don’t have the right to make this. I am waiting for this to arrive—a black and white letter to tell me who has the right to carve what designs. … Each decoration belongs to someone. … Copyright will stop people from making things haphazardly, by only letting people with the right to carve, carve. [author interview with Marie Ange Osea, Port Vila, April 4, 2001]

In establishing through dispute and discussion a consensual legitimacy for carvers, the high-ranking men of North Ambrym were pleased to extend their ideas about the local graded society of both past and present outward into the national, and even international, domain—cutting out those without proper customary legitimacy. Recently, several initiatives manufacturing and exporting drums have been set up by men from North Ambrym. Following the drafting of the document at the 2001 meeting of chiefs, these initiatives are run by the families who have been awarded sole ownership rights to the production of particular kinds of drums (see Toa 2004). The development of grassroots copyright legislation has finally succeeded in fusing the political authority of the Maghe with almost total economic control of the national market for north Ambrym carvings, especially that for vertical slit-drums.

Through their development of a mini-industry in the production of drums and figures for the tourist market, North Ambrym men have redefined the parameters of both market and kastom. In contrast to the seeming possessive individualism of commodity market exchange and the internationalist views of intellectual property legislators (cf. Chapman 2001; Coombe 1998a), Fanla villagers have managed to assert their own forms of entitlement on the basis of a local gerontocratic political economy. The market here has been propagated by the simultaneous stringency and flexibility of local narratives about entitlement, of which copyrights have long been a part. Expatriate collectors and dealers are increasingly affected by the stringent terms of North Ambrym men, who both restrict the pool of producers and control the pool of consumers, whether dealers or tourists.

The efficacy of analogies—the sorry story of another many-faced drum

During the course of my research, I quickly found that a local conception of copyright that I had initially aimed to track from Port Vila into the island had developed on Ambrym itself over many decades and that processes of establishing legitimacy and entitlement were evolving as much from the bottom up as from the top down. Also evident, perhaps unsurprisingly, was that ideas about indigenous copyright had developed in tandem with the growth of international commercial interest in customary artifacts and that this interest was a primary motivation for drawing the initial analogy between the entitlements of copyright and the kastom entitlements of the graded society. In this final section, I focus on the profound efficacy of this analogy in Vanuatu—an efficacy that I believe will extend into the national courtrooms if the Copyright Act becomes fully enforceable.

The proliferation of North Ambrym—style artifacts for sale in Port Vila, made by men without appropriate status or even ties to the island, is of great concern to carvers from North Ambrym, who frequently move between village and town. Intraindigenous tensions are also precipitated by the dealer stores in Port Vila, spaces that encompass some of the most confrontational social and political relations between foreigners and ni-Vanuatu. As in the case of the tensions between chiefs and Condominium officials on Ambrym described above, ideas about copyright have been consolidated by the wrangling for economic control that takes place within dealers’ stores. Copyright in Vanuatu is more than just a legalistic consolidation of customary entitlement using the language of international IPR; it is a crucial political tool—a powerful device in the manifestation of an indigenous political economy and of indigenous agency, more generally. This emerged explicitly in the confrontation that arose in Port Vila between high-ranking men from North Ambrym and an expatriate dealer.

The “art” stores fringing the main high street of Port Vila are primarily run by long-term expatriate residents of Vanuatu, predominantly French and Australian women. All of these women entered the artifact business through personal interests in “tribal art” and artistic practice. Within all of these Port Vila stores, carvings of various kinds by men from North Ambrym dominate the stock. By the end of my first stay in Vanuatu (August 2001), many of the established expatriate dealers were talking about closing down. Each dealer had personal reasons for withdrawal, but a general disaffection with the trade had also arisen, primarily related to the growing cultural politics of the marketplace that made it difficult for expatriate women to trade, especially in kastom artifacts made by men. Once more, carvers, carvings, and copyrights from North Ambrym have been at the forefront of this problem.

Tensions had come to a dramatic head in 1996, when an Australian dealer received a commission to have carvers in her workshop produce several large four-faced Ambrym slit-drums, to be used as posts for a new bridge at the Le Meridien Hotel in Port Vila.23 The local newspaper, the Trading Post, reported on the conflict that arose
over the hotel drums, which had been carved by two men from Fanla village, one of whom regularly worked in the dealer’s workshop, producing North Ambrym artifacts as well as stylized furniture, mirrors, and other decorations incorporating traditional motifs: “[The dealer] was reportedly ready to close down her business and leave Vanuatu following threats made to her by [an Ambrym chief] to ‘pay a custom fine’ of VT140,000 or have black magic custom put on her” (Trading Post 1996b). The newspaper reported the chief’s threat: “We will use old custom on you if you refuse to pay. Wherever you go and whatever you do in business it will fail if we do this” (Trading Post 1996b).

The dispute had arisen over the dealer’s right to commission the four-faced drums and to sell them to the hotel. Describing the Fanla carvers to the Trading Post as her “advisors on Ambrym custom,” the dealer related having been assured by them that they had the right to carve the faces on the drums. As soon as the images had, in fact, been carved, the carvers, under pressure from the chief, told the dealer that they had broken customary law and demanded 190,000 vatu (approx. $1,670) from her—the exact value of the contract with the hotel. The Malvatumauri ruled that the dealer should pay only a third of that amount, but she was still threatened by North Ambrym chiefs, who wanted her to pay them the full amount. The newspaper reported that the carvers were dissatisfied by the amount of money that the dealer had paid them out of the original contract with the hotel because, as a woman and a foreigner, she had no business profiting from their kastom. They subsequently approached the Department of Labor, eventually changing their demand for “customary compensation” to one for “severance pay” after their dismissal from the dealer’s employ as a direct result of this conflict.

The Trading Post article concludes that “expatriates are becoming increasingly more concerned over heavy custom fines in vatu often exceeding vt100,000 slapped on them for breaches of custom laws they know nothing about” (1996b). The Malvatumauri officially stated that it was in the process of drafting the kastom copyright laws and fines that would eventually be presented in parliament—an initiative that subsequently fed into the local and national copyright legislations I have been describing.

The following week, the Trading Post printed a response from the chief whom the newspaper had previously reported to be responsible for the threats to the dealer. The chief denied threatening her with magic or demanding a custom fine; instead, he asserted that the money owed to the carvers was merely payment for carving the drums and compensation for their dismissal. The chief commented that

to travel to Ambrym and buy a carved tamtam [Bislama for vertical slit-drum] is one thing but to get a carver from the island to carve tamtams outside Ambrym is quite another. … Our tamtam carving techniques are sacred to us from Ambrym and carving a tamtam in public for public viewing outside our island in the name of commercialisation is reducing our cultural values and a threat to our identity. [Trading Post 1996a]

In the newspaper’s final installment of the story, the front-page headline read: “Govt Say Ambrym Chiefs Must Pay Back the 140,000” (Trading Post 1996b). The dealer, angry at hearing the chief’s denial on the radio, contacted the minister for public works and transport, also from Ambrym, who sent in an official investigator. The investigator concluded that the carvers had transgressed the rules of copyright and had given the wrong advice to the dealer regarding the customary rules for carving the drums. In fact, the investigator concluded that if the dealer wanted to take the carvers to court, the government would support her case. The Malvatumauri apologized, claiming that it had been given the wrong information by the North Ambrym chiefs and that the dealer need not pay the fine. The government investigator concluded that “vt140,000 is a lot of money, that represents 8 pigs in our custom. Vatu cash is not a custom fine” (Trading Post 1996c).

The rubric of copyright, as it emerged within this conflict, had several meanings that arose in the movement of four-faced drums from North Ambrym to town. From beginning to end it is unclear whether the issue involved carving the drums per se, carving them inside or outside Ambrym, the commissioning per se of such drums, the commissioning and circulation of the drums by someone who was tabu and low status in local terms, the sale of such items, or the presentation of such items in a nonindigenus context. None of the parties involved made statements that were clear or consistent, and the story changed ground from week to week.

What is clear is that the rubric of copyright, rather than being a definitive assertion of a static conception of property and entitlement, was an instrument for the assertion of indigenous political and economic authority at the highest level. Despite the findings of the government’s investigation, the Ambrym chiefs won out in the end—although the dealer may have succeeded in negotiating the contract with the hotel and in winning her dispute about the legitimacy of her activities, she has since ceased trading in North Ambrym artifacts. When I interviewed all parties concerned in 2001, the dealer claimed that she had been given misinformation at every level and that she was genuinely frightened of North Ambrym sorcery; she carried a magical protective amulet from the island of Maewo on her person at all times. Chiefs from North Ambrym now control the market for their carvings.

Our tamtam carving
Conclusion

Copyright in Vanuatu is an arena within which political and economic entitlements are increasingly extended and contested, most importantly cross-cutting divides between exchange strategies and understandings of property and entitlement. In the case of the Australian dealer, copyright figures both as a trope to articulate various kinds of political and economic tensions and as a manifestation of indigenous political and economic agency. The analogy between the power of copyrights and of kastom entitlement was supported by the role of another kind of kastom—sorcery—in enforcing copyright through threats and fear. A carver from Paama Island, who also worked with the dealer in the case recounted above, told me that he was ill in hospital for a number of years after infringing copyright by carving images from North Ambrym—a victim of serious North Ambrym sorcery. The dealer I have been discussing is by no means the last to have been threatened by high-ranking men from North Ambrym who explicitly equate the rights to (re)produce and circulate their carvings with their own political authority.

I have argued that a long-standing analogy has linked international and indigenous reproductive entitlement to the extent that they are no longer two systems but one ever expanding domain of reproductive entitlement and authority. A usable written version of copyright legislation modeled primarily on the reproductive entitlements within the graded society of North Ambrym has been available to the nation-state for some time, and such initiatives have been salient to the drafting of national legislation. At the same time, Ambrym villagers’ conceptions of kopiraet have long been galvanized in explicit interaction with growing international market interest in their wooden carvings. The movements of images and artifacts between and within graded societies exemplify this contextual symbiosis: The spirit of the ceremony is also the spirit of exchange is also the spirit of copyright. These spirited transactions are extended into exchanges of objects between graded society members (as well as aspirant or fraudulent members) and foreign dealers. Contrary to the criticisms that many make about the tendency of market interest to greedily objectify and alienate culture, my study of the reproduction and transaction of North Ambrym carvings shows how an indigenous social and moral order may be extended through the commoditization of kastom material.

This survey of the development of diverse forms of copyright legislation in relation to the commodity market for carvings in North Ambrym forces scholars to confront the presumptions we make about international IPR legislation and attendant global commodity interest and its relationship to indigenous persons. The incorporation of Maghe rank and, by extension, political–economic entitlements into the international marketplace has resulted in the extension of an indigenous political economy, incorporating Australian dealers as well as ni-Vanuatu carvers from throughout the archipelago into a legitimate hierarchy. In this way, Fanla men provide a positive case study for the assertion of indigenous rights and concepts within the marketplace and within the domain of legislation to which the marketplace is so intricately connected. Rather than viewing the process of commoditization, and the attendant forging of IPR, as an alienating transition from immaterial to material, we might focus on “the ways in which relationships to objects can organize boundaries” of entitlement (Myers 2004:6, emphasis added) and how property relations are able to embody divergent concepts of entitlement and redefine the borders between ideas, places, and regions of political authority.

All of the cases of copyright I have discussed above concern many-faced drums from North Ambrym, and, indeed, as far as I know, the highest-profile national disputes and local prosecutions of copyright violation have involved these artifacts. These examples are having repercussions in other domains of production in Vanuatu, and people producing drums and masks on Malakula, dances in the Banks Islands, and the land dive ceremony on Pentecost have also started to use copyright as a way to think about the control of and profit from these manifestations of kastom. The entangled nature of understandings of copyright in Vanuatu demonstrates that copyright legislation has the potential to affect any system of entitlement as much as it may protect or be produced by it. Anthropological investigation and understanding is a crucial tool to fully comprehend the power of legislative narratives in the context of diverse enforcements of legitimate entitlement.

Notes

Acknowledgments. I wish to thank the Economic and Social Research Council, University College London Graduate School, the Cambridge Museum of Archaeology and Anthropology’s Crowther-Beynon Fund and Getty Photographic Project, and the VCC for supporting fieldwork in Vanuatu in 2000–01 and 2003. Chief Willie Bongmatur Maldo, Chief Hanghang (James) Taimnal, Bule Taimnal, Abel Bong, Kirk Huffman, Connie Wells, Knut Rio, Ralph Regenvanu, Susanne Küchler, Chris Tilley, Graeme Were, Chris Wright, Lucy Norris, Allen Abramson, Nick Saunders, Benedicta Rousseau, Mark Busse, Deidre Brown, Barbara Bodenhorn, Fred Myers, Lissant Bolton, and Stephen Neale all shared their experience, wisdom, and opinions with me or made helpful comments on various drafts of this article, and I am extremely grateful to them all. Nancy Hynes provided an instructive critique and structural corrections, helping me to clarify many issues. Thanks also to Virginia Dominguez and three anonymous reviewers for American Ethnologist for invaluable comments and criticism.

1. All translations from Bislama, the national pidgin English of Vanuatu, are mine.
For those unfamiliar with the ethnography of the Pacific, the neo-Melanesian term *kastom* (kastum in the Solomon Islands and kastam in Papua New Guinea) has been forged as a notion of indigenous culture. The concept generally builds on a vision of a collective past in the present, at first glance seeming to bypass the colonial period (although frequently including Christianity), and is geared both toward the establishment of an indigenous political economy and nation-state and toward the staking of grassroots village identities.

2. For those unfamiliar with the ethnography of the Pacific, the neo-Melanesian term *kastom* (kastum in the Solomon Islands and kastam in Papua New Guinea) has been forged as a notion of indigenous culture. The concept generally builds on a vision of a collective past in the present, at first glance seeming to bypass the colonial period (although frequently including Christianity), and is geared both toward the establishment of an indigenous political economy and nation-state and toward the staking of grassroots village identities. For deeper discussion of the category of “kastom,” in relation to Vanuatu and to the Melanesian region, more generally, see Bonnemaison 1994, Bonnemaison et al. 1996, MacClancy 1981, and Otto and Thomas 1997. Here, I also use the term kastom in lieu of traditional or customary, not only in recognition of the terminology most commonly used by ni-Vanuatu (citizens of Vanuatu) but also to emphasize that the long-standing notion of “custom” in law is not necessarily interchangeable with that of “kastom.” I thank Benedicte Rousseau for drawing my attention to this distinction.

3. Vanuatu is a country of over 70 inhabited islands set in the Melanesian region of the southwest Pacific. The archipelago is renowned for its cultural and linguistic diversity, with over 110 different languages spoken by approximately 200 thousand inhabitants. In 1999, the population of the capital, Port Vila, was approximately 30 thousand. Governed by an Anglo–French condominium as the New Hebrides from 1906 to 1980, the country took its current name, meaning “the country that stands up,” from an amalgam of indigenous languages, at independence in 1980. Citizens of Vanuatu speak Bislama, the national pidgin, alongside French, English, or both and their local language. See Bonnemaison 1994, Bonnemaison et al. 1996, MacClancy 1981, and Miles 1998 for more detailed historical background.

4. See UNESCO 1987, 1999, 2005. Prior to the passing of the Copyright Act there were no specific legal mechanisms protecting ni-Vanuatu intellectual property rights (IPR) outside of the country. Supporting internal legislation was in place within the Vanuatu National Cultural Council Act, the Preservation of Sites and Artifacts Act, the Island Courts Act, and elements of the criminal code (i.e., on the desecration of graves). The policy of the National Council of Chiefs (see Bongmatu 1994) and the Vanuatu Cultural Research Policy (1997, currently being updated) had also initiated discussion about IPR, particularly in relation to kastom. The research policy was drafted in 1995 after the lifting of a ten-year moratorium on all foreign sociological, scientific, and ethnographic research, in part, because of disaffection with certain researchers and in keeping with a drive to give ni-Vanuatu the rights to conduct, create, and present their own research.

5. In addition to the Copyright and Related Rights Act, trademarks, designs, and patents acts have all been passed by the Vanuatu parliament. At the time of this writing, none of these acts have yet been gazetted, which means that, like the Copyright Act, they are not currently enforceable. Although the Vanuatu government has long-term plans to become a signatory to the Berne Convention and to join WIPO and, eventually, the WTO, the feeling is that these steps are unlikely to take place in the near future (Ralph Regenvanu, personal communication, April 1, 2004). There are other inhibitors to Vanuatu joining the WTO, most especially the essential inalienability of land as defined by the national constitution, which is very unsatisfactory to many foreign investors.

6. Part 7 of the act, the “Offence in Relation to Expressions of Indigenous Culture,” deals with the “Offence to Contravene Custom.” Section 41(1) decrees:

   if a person does an act of a kind mentioned in subsection 8(1) or 23(1) in relation to an expression of indigenous culture (for example, reproduces an indigenous carving in material form) and the person:
   
   (a) is not one of the custom owners of the expression; or
   
   (b) has not been sanctioned or authorised by the custom owners to do the act in relation to the expression; or
   
   (c) has not done the act in accordance with the rules of custom;

   the person is guilty of an offence punishable on conviction by a fine not exceeding 1,000,000 Vatu [$8,800] or a term of imprisonment not exceeding one year, or both. [Republic of Vanuatu 2000:32, emphasis added]

7. In this article, I focus solely on the most material form of intellectual property, copyright. Strategic analogies have also been forged around patents in Vanuatu, for instance, in the Kava Act No. 7 of 2002, which patents local kava knowledge and production (I thank Lamont Lindstrom for drawing my attention to this legislation), as well as more generic patent, trademark, and design legislation. Whereas previous academic analyses of copyright in Vanuatu have drawn an analogy between the ceremonial creation and enforcement of a multitude of rights, many of which are required to reproduce knowledge and maintain social and political hierarchies (e.g., Huffman 1996; Lindstrom 1990:72), Marilyn Strathern has noted that such analogies may on occasion be inappropriate. For instance, in her subtle discussion of New Ireland Malanggan (Strathern 2001), she notes that although the production of Malanggan is commonly considered to be governed by an indigenous copyright system (see Gunn 1987), indigenous exegesis suggests that the true locus of Malanggan is in the mind of the producer, rather than in the form of carved wood (see Küchler 1987, 1992). Here, the emphasis on intangible individual creativity within patent legislation might be a more appropriate form of comparison than the more material emphasis of copyright law. Although Strathern is at pains to point out that New Iregular producers “do not think of Malanggan as inventions (application of technology) nor as describing the original inventive step (patents)” (2001:15), copyright (and its neo-Melanesian transliteration kopiraet) is a term that has passed into common parlance throughout the Pacific islands, even for some Malanggan producers. My discussion of copyright in Vanuatu, therefore, follows this locally drawn analogy and use of copyright terminology.

8. Terri Janke comments that incorporating sui generis systems into copyright legislation means

   not only recognizing the uniqueness of Indigenous culture but also respecting it and understanding that Indigenous knowledge and Western knowledge are two parallel systems of innovation. Furthermore, it must be recognized that Indigenous customary laws and the existing Australian legal system are two parallel systems of law, both of which need to be given proper weight and recognition. [2003:4]

See Commission on Intellectual Property Rights 2002 for an advocacy of the development of sui generis systems of global IPR legislation. Within this document sui generis in law is defined as “a distinct system tailored or modified to accommodate the
special characteristics of traditional knowledge or folklore” (Commission on Intellectual Property Rights 2002:102 n. 14). The writers are a little more hesitant than Janke, commenting,

Whether these national systems as they evolve will have sufficient common characteristics to enable the development of an international sui generis system remains to be seen. We recognise that there is continuing pressure for the establishment of an international sui generis system, as recently articulated by the G15 Group of developing countries. With such a wide range of material to protect and such diverse reasons for “protecting it”, it may be that a single all-encompassing sui generis system of protection for traditional knowledge may be too specific and not flexible enough to accommodate local needs. [Commission on Intellectual Property Rights 2002:89–90]

9. In recent years, thorough ethnographic engagement, in the Pacific and beyond, has demonstrated that the boundaries between artifactual property forms, such as gifts and commodities (and, by extension, the forms of sociality that they are perceived to engender) are not as well delineated as Marcel Mauss and many others originally conceived (e.g., Gell 1992 and Miller 2001, building on such works as Godelier 1999, Gregory 1982, Mauss 1990, Strathern 1988, and Weiner 1992) and that an intrinsic entanglement of alienation, animation, and ambiguity characterizes exchange domains such as those of currency (Akin and Robbins 1999; Foster 1998) or the ownership and production of cultural identity (Battaglia 1995; Errington and Gewertz 2001).

10. Huffman 1996, Lindstrom 1997, and Rio 2002, among others, have linked the ceremonial creation and enforcement of a customary entitlement to the category of copyright. In addition, copyright has provided a narrative framework to assertively respond to the expansive incursions of nationalization and increased tourism into villages (e.g., Bongmatur 1994; Jolly 1994).

11. The generic term nimangki (or naminaggi; see Crowley 1995) is not entirely uncontested. The presence of this term in the Bislama lexicon exposes an academic bias toward the graded society of southern Malakula, on which much linguistic and anthropological research has focused (e.g., Deacon 1934). To add to the confusion, Nimangki (with capital N) is also the proper name for the local graded society of southern Malakula, as Maghe is for North Ambrym. In this article, I use the term graded society because of its general salience within the ethnography of the region (e.g., see Allen 1981b). At present, the term nimangki is used as a self-conscious construction of regional identity mainly by people of Malakula and Ambrym (both in town and island) when talking in Bislama. It is also used within the VCC (which focused much of its early work on the island of Malakula) and is gradually becoming more widespread in Port Vila. Lissant Bolton (personal communication, September 2002) has commented that the term nimangki is not much recognized on Ambae and in oral literature that southern Malakula was the origin point for a graded society that was exchanged throughout Malakula, to Epi, Paama, and through to Epi and North Ambrym (see Geismar 2003:ch. 5). Some evidence, however, indicates that a few Malakulan titles may have been introduced from Ambae and North Pentecost in the 19th century (Jolly 1991:51; Layard 1942:380–381). Nevertheless, a general consensus prevails in both written literature and oral history that southern Malakula is not much recognized on Ambae and North Ambrym is famed throughout Vanuatu for its tradition of importing “culture” from other places.

13. Although female counterparts for these hierarchical systems often exist, they are not linked to a public discourse of copyright, and, in general, the public stratification of entitlement in Vanuatu remains an exclusively male preserve, in accordance with highly conventional gender divides. In addition, knowledge of these ritual systems, both male and female, is generally restricted to the initiated. Many anthropologists have written on the topic, and, more importantly, ni-Vanuatu fieldworkers are currently maintaining and documenting their own traditions in a way that is culturally appropriate. Throughout this article, I position myself as an uninitiated woman. I do not attempt to give any detailed description of the Maghe, or any other graded society, but focus instead on the most public elements of the complex as they emerged in relation to ideas about copyright for men and women throughout Vanuatu. Gender is of prime importance in the regulation of entitlement, as will be seen later in the case of an expatriate female dealer. A detailed consideration of this topic, however, is beyond the scope of this article. Here, I simply note that the copyright complex I discuss has emerged in relation to male authority and material culture. I discuss more of the nuances of copyright and gender in Geismar 2005.

14. The practices of the graded societies have been widely affected by the advent of both Christianity and colonialism. For example, Knut M. Rio (2002:ch. 1) reports that in North Ambrym, Maghe is rarely practiced in full (see also Jolly 1982 for discussion of the impacts of Christianity and kastom on Pentecost), and Ralph Regenvanu commented to me that “there is now no recognized ultimate custom authority on Ambrym anymore . . . and each camp is interpreting kastom in its own interest—the common ground of understanding about kastom is rapidly growing smaller” (personal communication, February 15, 2002). Here, I focus on some ways in which ideas about the graded society are galvanized in the present, without entering into debates about customary authenticity or providing an ahistorical account of ritual practice.

15. Vertical slit-drums are a crucial musical and visual component of many ritual ceremonies and are an intrinsic part of the ceremonial (and public) spaces of every North Ambrym village. At the same time, they have a higher national and international profile than any other kind of artifact in Vanuatu: North Ambrym slit-drums and ranked figures are prominent within public spaces throughout Port Vila. They are prominent as public carvings in...
Nouméa, the capital city of the neighboring French territory of New Caledonia, and have been collected by museums worldwide. The success of these carvings in a plethora of contexts has precipitated increased local interest in establishing exclusive entitlements to both produce and circulate kastom in widening spheres of exchange. Clausen 1960; Guiart 1949, 1953, 1956; Patand-Celerier 1997; Patterson 1976, 1996; and Rio 1997, 2000 give detailed accounts of the history and iconography of vertical slit-drums of North Ambrym.

16. In Fean, the language of North Ambrym, the word for copyright is given as namyelku, but the transliteration kopiraet is used increasingly even when people speak in their local language. I conducted research in Bislama, rather than in North Ambrym language. This does not negate the vitality of the term copyright or kopiraet to local reckonings of authority as they increasingly take place within the zone of nation and beyond, requiring the use of Bislama over the local language for communication.

17. Throughout this discussion, I refer to Bongmatur as Chief Willie, as most people in Vanuatu do.

18. In requesting that I transcribe his genealogy in 2001, Chief Willie built on life histories that he had already recounted to Bolton in 1997 (published 1999) and to Lindstrom in 1992 (unpublished; see also Macdonald-Milne and Thomas 1981). These accounts provide a more detailed commentary on Chief Willie’s life.

19. The presence of the half-million U.S. troops (see Rodman 2001:108) who were stationed in the archipelago during World War II inspired a boom in the production of trinkets for the market—bows, arrows, grass skirts, and so on. The relative isolation of the North Ambrym region, however, and the conversion of locals to Christianity en masse only in the 1970s meant that systematic commercialization of kastom carvings did not occur until the numbers of tourists started to increase with the growth in air travel and the (limited) development of tourist infrastructures in the islands. Although Vanuatu has by no means been developed to support mass tourism, the revenues brought in by local ventures—small island-style accommodations, transport, and the sale of artifacts—is an important part of the local economy, for many providing the most direct access to earning small sums of cash.

20. The drum presented to the English monarch is now in the Cambridge Museum of Archaeology and Anthropology. A senior member of the diplomatic service wrote to the resident commissioner at the time, “The Queen is prepared to accept the gong and that she would wish it to be offered to the School of Anthropology at Cambridge, or if they do not want it, the Imperial Institute. Her Majesty does not wish it to be set up in Windsor Park. I should be grateful if you would inform Chief Tofor of Her Majesty’s decision, at the same time conveying in suitable terms her thanks for the gift” (Mayall 1989).

21. Today, despite having resisted the advent of Christianity for many years, every Fanla village claims an allegiance to either the Presbyterian or Seventh Day Adventist Church, and during my stay in Fanla, the Seventh Day Adventist Church had achieved majority membership, despite being the more recent arrival to the area.

22. The phenomenon of killing pigs belonging to kastom villagers, and, thus, sabotaging participation in ceremonial life, has been commented on by Jean Guiart (1949). At the time of Guiart’s writing both the Presbyterians and Seventh Day Adventists along the coasts were devising idiosyncratic methods of killing the pigs of the still-pagan villagers of the interior (Fanla region).

23. I have not used the real names of the participants in the case discussed here. The very public nature of the contestation over rights resulted in significant press coverage in Vanuatu that I quote from in this account. The weekly development of the debate in the pages of the Trading Post newspaper (now called the Vanuatu Daily Post) allowed for the parties concerned to intercede in the debate. Although not necessarily a definitive explanation of the events that transpired, the account exposes some of the political tensions and contradictions surrounding local enforcement of copyright.

References cited

Akin, David, and Joel Robbins, eds.

Allen, Michael


Allen, Michael, ed.

Battaglia, Deborah

Blackwood, Peter

Bolton, Lissant
1999 Chief Willie Bongmatur Maldo and the Incorporation of Chiefs into the Vanuatu State. State, Society and Governance in Melanesia. 2. Canberra: Research School of Pacific and Asian Studies, the Australian National University.


Bongmatur, Willie

Bonnemaison, Joel


Bonnemaison, Joel, Kirk Huffman, Christian Kaufmann, and Darryl Tryon, eds.

Boyle, James

British District Agent
Brown, Michael

Chapman, Audrey R.

Clausen, Raymond

Commission on Intellectual Property Rights

Coombe, Rosemary J.

Deacon, Arthur B.

Errington, Frederick, and Deborah Gewertz

Foster, Robert

Janke, Terri

Jolly, Margaret

Kastom

Lindstrom and Geoffrey M. White, eds.

Commission on Intellectual Property Rights

Coombe, Rosemary J.

Deacon, Arthur B.

Errington, Frederick, and Deborah Gewertz

Foster, Robert

Janke, Terri

Jolly, Margaret

Kastom

Lindstrom and Geoffrey M. White, eds.

Commission on Intellectual Property Rights

Coombe, Rosemary J.

Deacon, Arthur B.

Errington, Frederick, and Deborah Gewertz

Foster, Robert

Janke, Terri

Jolly, Margaret

Kastom

Lindstrom and Geoffrey M. White, eds.

Commission on Intellectual Property Rights

Coombe, Rosemary J.

Deacon, Arthur B.

Errington, Frederick, and Deborah Gewertz

Foster, Robert

Janke, Terri

Jolly, Margaret

Kastom

Lindstrom and Geoffrey M. White, eds.

Commission on Intellectual Property Rights
Leach, James

Leach, Michael J.

Lindstrom, Lamont

Lindstrom, Lamont, and Geoffrey M. White, eds.

Lipset, David

MacClancy, Jeremy

Macdonald-Milne, Brian, and Pamela Thomas, eds.

Mauss, Marcel

Mayall, A. Lees, Sir

Miles, William F. S.

Miller, Daniel

Myers, Fred

Norton, Robert

Otto, Ton, and Nicholas Thomas, eds.

Patand-Celerier, Philip

Patterson, Mary

Patterson, Mary


Posey, Darryl, and Graham Dutfield

Pottage, Alan

Republic of Vanuatu

Rivers, William Halse Rivers

Rodman, Margaret

Rousseau, Benedicta

Smith, Linda Tuhuiwi

Solomon, Maui

Strathern, Marilyn


Toa, Evelyne
Tonkinson, Robert

Trading Post
1996b Ambrym Chiefs Threaten Expatriate Business Woman. Trading Post, No. 139, April 27.
1996c Govt Say Ambrym Chiefs Must Pay Back the 140,000vT. Trading Post, No. 143, May 11: 1.

UNESCO

Vanuatu Cultural Research Policy

Weiner, Annette

Whimp, Kathy, and Mark Busse, eds.

Wilkins, Darrall K.

World Trade Organization

Wright, Michael

accepted February 14, 2005
final version submitted February 23, 2005

Haidy Geismar
Program in Museum Studies
New York University
240 Greene Street, Suite 400
New York, NY 10003-6675
haidy.geismar@nyu.edu