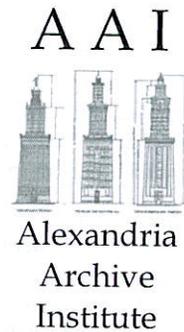


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Dr. Julia A. King, Chair
Advisory Council on Historical Preservation
Archaeology Task Force
Advisory Council on Historical Preservation
1100 Pennsylvania Ave., NW, Suite 809
Washington, DC 2004

Re: "Draft Policy Statement Regarding Treatment of Human Remains and Grave Goods"

Dear Dr. King,

Thank you for the opportunity to review the draft policy changes regarding the treatment of human remains and grave goods. My main points of concern here focus on the documentation of disinterred human remains and funerary items.

As stated, the goal of this proposed policy statement is to offer "leadership in resolving to treat burial sites, human remains, and funerary objects in a respectful and sensitive manner, while acknowledging the public interest in the past". Most of the policy statements and principles concern the treatment of tangible remains. However, there is little or no guidance regarding the disposition of the documentation (images, field notes, analytic data, interviews with community members, etc.) that may be developed when burial sites, human remains, or funerary objects are encountered.

I recommend that the taskforce study frameworks for treatment of such documentation. Obviously, this documentation will contain sensitive information and much of it will be digital. The growing reach and power of the Internet and digital communication further highlights the need for a clear policy framework.

Some Suggestions for the Taskforce to Consider:

In general the draft policies rightfully take the position that descendent communities should not be alienated from the human remains, burial places, and funerary objects of their ancestors. This general position should be extended to the documented record of such remains, which will avoid unethical commodification and appropriation of the documentation (including physical samples) developed in the course of encountering burial remains. Meaningful consultation should be extended to the documentation of burial sites, human remains, and funerary objects (extending principle 5 and 7 of the draft policy). In addition to the preservation, scientific, and historical value of such documentation, culturally specific notions of privacy, propriety, and spirituality should be respected in the creation, archiving, dissemination, and application of the documentary record. Site security and looting concerns must also be recognized. Guidelines that help publishers, archives, digital repositories and the public treat such documentation appropriately should be developed. In cases where documentation leads to scientific analysis and publication, steps should be taken to insure that local (esp. tribal) communities benefit from such analyses through access, reuse and reinterpretation of burial derived studies.

I urge the taskforce to consider "Open Access" frameworks that work in conjunction with a meaningful consultation process (i.e. local and tribal communities must help determine what content is appropriate to share). Open access makes sense in terms of the taskforce's goal of "acknowledging the public interest in the past". This type of sensitive information should not be locked away behind restrictive commercial systems (most scholarly publishers included) that do not permit transparency and scrutiny by members of tribal communities or the general

public. Open access frameworks have well documented advantages for the scientific community¹, and are very popular with the general public². Moreover, these “some rights reserved” frameworks can better serve tribal and public interests in the following ways:

- (1) *Tribal communities will gain notification and access to scientific studies and other works that stem from the documentation of their ancestors. Transparency in access is an essential requirement for the benefits of scientific investigation to be shared, and an essential tool for members of indigenous communities to monitor and understand scientific representations of their heritage.*
- (2) *Members of tribal communities should have all needed rights (without interference from copyright restrictions) to copy, reuse, and otherwise create “derivative” (in the sense of copyright law) works based on all works that result from such documentation. Such rights are essential tools in insuring that members of tribal communities can voice their own interpretations about the past. Such rights will also provide a measure of clarity for non-tribal interests in terms of negotiating further work related to the tribal heritage.*
- (3) *Meaningful forums can be developed for members of the public and tribal communities to evaluate and comment upon such scientific studies. Interpretations and analyses should be open for public comment, debate, and evaluation.*

Finally, the taskforce should make it clear that the documentation of burial remains is not a resource to be “mined” for commercial exploitation. While this concern is still mostly speculative, it should still be considered. Traditional medical knowledge has already been heavily exploited by pharmaceutical manufacturers, with little to no benefit typically returned to local communities. Thus, commercial concerns, though they may not be immediately apparent, may emerge in the future, especially given the quickening pace of technological change. Some areas of concern include the potential for future studies to recover ancient DNA with biotechnology applications. More immediate concerns include the appropriation of traditional culture including, artistic motifs, or other forms of cultural expression that are documented in sensitive mortuary contexts. The taskforce should clearly state that tribal communities should control the manner in which such documentation is used in commercial applications.

I recognize that the issues are complex and difficult, and that many of the suggestions offered in this correspondence are likely to garner objections from some parties. However, I raise these issues because the intellectual-property frameworks in this area need more attention. Finally, I want to end on a note of optimism. A multiple-stake-holder driven process that develops policies for the treatment of burial related documentation is the best way to proceed. “Some rights reserved” frameworks make it possible to meet the public interest in enhancing scientific and historical understanding while empowering local stakeholders³. These positive developments toward building more fair and open intellectual-property systems can help encourage interested communities to find some common ground on these complex issues.

I thank you for considering these comments, and wish the Task Force success in building an equitable and appropriate policy framework.

Yours sincerely,



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¹ “Citation Advantage of Open Access Articles” (<http://biology.plosjournals.org/perlserv/?request=get-document&doi=10.1371/journal.pbio.0040157>)

² “Americans Overwhelmingly Back Open Access” (<http://sciencecommons.org/weblog/archive/2006/05/31/americans-overwhelmingly-back-open-access>)

³ Eric Kansa, Jason Schultz, Ahrash Bissell. “Protecting Traditional Knowledge and Expanding Access to Scientific Data”, *International Journal of Cultural Property*, Vol. 12, Num. 3. (Self-archived preprint: http://www.alexandriaarchive.org/IJCP%20Article%20FINAL_share.pdf)