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Tribal Archives, Traditional Knowledge, and Local Contexts: Why the “s” Matters

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Cover Page Footnote

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ABSTRACT

In this article I examine the landscape of tribal or indigenous archival management as it related to digital assets and more specifically how these might help us reimagine the intellectual property needs of local, traditional, and indigenous communities, libraries, archives, and museums as they seek to manage, preserve and reuse their digital cultural heritage. The colonial collecting project was a destructive mechanism by which Native materials were unhinged from their local places and knowledge and at the same time used as markers of Native erasure. As part of a practical solution to contemporary intellectual property dilemmas faced by Indigenous peoples globally due in large part to the residue of the colonial landscape, I will introduce the Local Contexts project and the Traditional Knowledge License and Label platform (www.localcontexts.org) as one intervention into the sometimes-confusing arena of Indigenous intellectual property rights and the digital commons.

Digital Landscapes: Concerns and Contexts

One of the most pressing concerns for tribal librarians and archivists is managing, preserving, and caring for the large amounts of diverse cultural heritage materials not only in their holdings, but also those that reside in physically distant collecting institutions. While one urgent need expressed by tribal archives, libraries, and museums (TALMs) is the digitization of collections, this seemingly matter-of-fact process poses unique challenges for Indigenous collections that often have associated cultural and ethical considerations that may not align easily with the types of circulation and access afforded by digital preservation strategies.¹ For example, in the Manuscripts, Archives and Special Collections (MASC) division at the Washington

1. Miriam Jorgensen, *Sustaining Indigenous Culture: The Structure, Activities, and Needs of Tribal Archives, Libraries, and Museums* (Oklahoma City, OK: Association of Tribal Archives, Libraries, and Museums, 2012), 12.

State University (WSU) Libraries where I work with several regional tribal nations, we hold collections that have religious, political, and cultural meaning associated with them by tribal members that we may or may not be aware. While our digitization efforts in the MASC are aimed at providing access to collections, we are also aware that tribal materials often pose special issues related to access and use.²

In one case, a visit by three women from the Confederated Tribes of the Warm Springs Reservation revealed that a cassette tape collection we held contained a set of religious songs that were not traditionally to be heard by outsiders. During the tribal visit our archives staff learned about the proper circulation routes for this material and the necessity of making digital copies for tribal members to access these precious recordings. Not only did we provide the women with a set of the tapes digitized, but we also pulled the offending tape from general circulation. At WSU we have a university-wide Memorandum of Understanding (MOU) with several tribes in the tri-state region committing us to work with and respect the needs of tribal nations.³ In the Libraries, and particularly, within our collaborative Plateau Peoples' Web Portal project (discussed more below), we have a commitment to valuing diverse sets of stewardship. These commitments allow us to work on a case-by-case basis to determine how to manage cultural materials. However, this one solution could have easily become a tense battle under the current legal system. Legal ownership of the tapes resides with WSU, regardless of the people who were recorded and under what circumstances.

The colonial collecting project was a destructive mechanism by which Indigenous cultural materials were removed from communities and detached from local knowledge systems. Much of this material remains today not only physically distant from local communities, but also lodged within a legal system that steadfastly refuses local claims to stewardship of these materials. In this article I examine some of the legal terrain contextualizing Indigenous intellectual property concerns in relation to the needs of local TALMs in their efforts to manage and preserve their collections under varied systems of access and in collaboration. While international treaties and corrective legal instruments are on the horizon, practical, local, community-driven solutions form another important part of defining the landscape of digital cultural heritage management. This article introduces the Local Contexts project and the corresponding Traditional Knowledge (TK) License and Label platform as one way to navigate the sometimes-confusing arena of Indigenous intellectual property rights in an expanding digital landscape as a practical solution that mediates these often-times tense overlapping fields of practice.

2. For a discussion of the Plateau Peoples' Web Portal project and its collaborative curation strategy for the shared digital collections see Kimberly Christen, "Opening Archives: Respectful Repatriation," *American Archivist* 74 (Spring/Summer 2011): 185-2010, for a discussion of the Plateau Peoples' Web Portal project and its collaborative curation strategy for the shared digital collections.

3. The full MOU can be accessed here: <http://native.wsu.edu/tribal-liaison/mou/>.

Cultural Knowledge Management: Digitization, Preservation and Access

Over the last several years international debates concerning the role of Indigenous knowledge in the curatorial practices of non-Indigenous collecting institutions have intersected with international policy making efforts in relation to the protection and promotion of traditional knowledge and traditional cultural expressions through legal and extra-legal means. Recent debates run along two intersecting tracks: 1) collecting institutions engaging with local communities to facilitate a mutually beneficial dialogue concerning the ethical and practical implications of repatriating collections and 2) international policy-making bodies, most prominently the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO), engaging with scholars and Indigenous peoples to create policies and procedures that would not just protect and preserve cultural heritage materials, but also, at the same time, promote the dynamism and ongoing creation of cultural traditions.

In the last twenty-five years information management practices have been changed by Indigenous concerns. McKemmish, Iacovino, Russell, and Castan argue that “Emerging research and theory building in archival science have cleared the way for a refiguration of recordkeeping structures and values, and subsequently for developing, testing and implementing methods and tools for new recordkeeping and archival policies and practices which accord to modern societal needs and expectations.”⁴ Similarly, in her work at the University of British Columbia Libraries, Ann Doyle argues for an integration of Indigenous knowledge systems into Western library management paradigms and practice at every level from recordkeeping to the very categories and processes used to organize collections.⁵ In Australia, Aboriginal scholars and activists Martin Nakata and Marcia Langton further argue for the inclusion of the tensions associated with attempting to bridge varied knowledge traditions.⁶

What these scholars and practitioners show is that incorporating Indigenous knowledge systems into library and archive practices will not just enhance relationships and create access to records, but more importantly, it has the potential to decolonize archival practices and modes of access. They highlight the need to

4. Sue McKemmish et al., “Editors’ Introduction to Keeping Cultures Alive: Archives and Indigenous Human Rights,” *Archival Science* 12 (2012): 93–111, 108.
5. Ann Doyle, “Naming and Reclaiming Indigenous Knowledges in Public Institutions: Intersections of Landscapes and Experience,” in *Knowledge Organization for a Global Learning Society: Proceedings of the 9th International Conference for Knowledge Organization, Vienna, Austria 2006*; Evelyn Wareham, “Our Own Identity, Our Own Taonga, Our Own Self Coming Back: Indigenous Voices in New Zealand Record-Keeping,” *Archivaria* 52 (2001): 26–46.
6. Martin Nakata and Marcia Langton, introduction to *Australian Indigenous Knowledge and Libraries* (Sydney, Australia: UTSePress, 2005).

recognize and meaningfully incorporate Indigenous knowledge systems as models in their own right, alongside, and as part of, standard Western library systems. Instead of simply “adding” Native comments to the records, or offering an “inclusion” model that only alters Indigenous recordkeeping, they suggest *structural changes* to the core of information management systems across the board. These systematic overhauls will be the only way to ensure that Indigenous knowledge is a part of the ongoing record.

In order to make these changes, correct records, and redefine archival systems, many tribes are using their own digital archives and regionally accessible Web portals as practical ways to facilitate sharing knowledge, engaging local knowledge holders, expanding collections, and promoting the use and creation of new knowledge and cultural materials. For example, the University of Oregon’s Major Lee Moorhouse digital collection, “Picturing the Cayuse, Walla Walla, and Umatilla Tribes” is a “collaborative project among the Tamástslit Cultural Institute (TCI) of the Confederated Tribes of the Umatilla Indian Reservation, the University of Oregon (UO) Libraries, and Western Interstate Commission for Higher Education (WICHE) that allows for both the historic record and added Native American descriptions.”⁷ Similarly, the Plateau Peoples’ Web Portal, is a collaboration between Washington State University, the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, The Confederated Tribes of the Colville Reservation, the Spokane Tribe of Indians, The Confederated Tribes of the Warm Springs, and the Coeur d’Alene Tribe.⁸ The Portal follows a collaborative curation model that layers the narratives, histories, and tribal knowledge from each tribe with the standard metadata from the institutional sources. The Portal is different from many digital archive projects because it provides the tribes involved with access to and complete control over their “tribal path” within the Portal. Each tribe has access to the backend of the database so that they can upload, edit, define metadata fields, and manage their own digital materials along with the institutional records.⁹ Regional efforts to both expand digital repositories to include Native materials and at the same time redefine management of these materials provide a template for larger national and international projects that can shift archival practices to include divergent management systems and collaborative efforts at all stages of the preservation and access lifecycle.

At the same time as this renegotiation within cultural institutions has been occurring, Indigenous activists, scholars, and researchers, in collaboration with other scholars and technology experts, have been creating community-based documentation and recording projects, developing protocols for new archiving

7. University of Oregon, “UO Libraries,” <http://oregondigital.org/digcol/mh/about.php> (accessed April 19, 2014).

8. Washington State University, “Plateau Peoples’ Web Portal,” <http://plateauportal.wsulibs.wsu.edu/> (accessed June 22, 2014).

9. Christen, “Opening Archives,” 2011.

models, and working to introduce cultural parameters into large-scale digitization projects.¹⁰ These projects deliberately position Indigenous communities themselves as the owners and custodians of the material that is being created and thus the central decision-makers for controlling and disseminating cultural material and cultural knowledge. This emphasis on local protocols and the use of Indigenous models of information management was the catalyst for the development of Mukurtu CMS (www.mukurtu.org), a free and open source content management system built from the ground up with the needs of Indigenous communities in mind.¹¹ Mukurtu allows communities to define levels of access to and circulation of their digital heritage materials within their own archival platform.

Within Mukurtu CMS, customizable cultural and sharing protocols allow for fine-grain management of access within the archive. Protocols may be based on family groups, clans, ritual societies, gender, age, seasonal activities, etc. In any and all cases, the protocols are flexible, adaptable and can be changed at any time. The salient point is that the communities themselves decide together how best to share and circulate their cultural materials. Mukurtu allows local communities (however defined) to use their own protocols for the viewing, circulation, use, and access to cultural materials to be embedded into their community archive. For example, if a tribe has traditional access parameters around the viewing of sacred materials limited only to elders, or if some songs should only be heard in specific seasons, or if only initiated members of a specific clan should be allowed to view cultural objects, they can use these protocols to determine access within the database itself.

During the development of Mukurtu CMS we found a lot of uncertainty about the ownership and use of digital materials by the communities with whom we worked. Questions undoubtedly arose about how to safeguard cultural materials in their digital format as they circulated both internally (for example, in a community archive) or externally (on the Internet) in ways appropriate to them. Although our initial development phase was focused on creating a solution for access to local cultural materials emphasizing diverse access parameters, what we found was that intellectual property rights laws writ largely interrupted this effort by taking away the option in many cases for any reasonable control over local materials. For example, in the Warumungu case, images of Warumungu people now deceased and early ethnographic films depicting sacred ceremonies and revealing sacred locations on the

10. Kimberly Christen, "Balancing Act: The Creation and Circulation of Indigenous Knowledge and Culture Inside and Outside the Legal Frame," in *Transnational Culture In The Internet Age*, ed. Sean A. Pager and Adam Candeub (Northampton, MA: Edward Elgar Publishing, 2012), 316-344; Haidy Geismar and William Mohns, "Social Relationships and Digital Relationships: Rethinking the Database at the Vanuatu Cultural Centre," in special issue "The Aesthetics of Nations: Anthropological and Historical Approaches," *Journal of the Royal Anthropological Institute* 17 (2011): 133-155; Kate Hennessy, "Virtual Repatriation and Digital Cultural Heritage: The Ethics of Managing Online Collections," *Anthropology News* 50, no. 4 (2009): 5-6.
11. The National Endowment for the Humanities and the Institute for Museum and Library Services have funded the development and ongoing support of Mukurtu CMS, a collaboration between Washington State University and the Center for Digital Archaeology (CoDA).

landscape were not legally owned by the community or any individual within the community, but instead were the property of one scholar and his estate. This problem of ownership became a new thread for understanding the limits of access and the relationship of internal cultural protocols to external legal systems that define access and circulation.¹² While Mukurtu fills a gap in the access needs of many communities, we knew from the outset that managing the intellectual property rights of communities would be a significant need as well. We tested a set of alternative licenses very early on in our development phase and could see from the response that what was needed was an intervention into both the social and legal systems surrounding the digital circulation of cultural materials.¹³

Traditional Knowledge and Intellectual Property Concerns

Within international policy fora the integration of Indigenous knowledge has been central to reworking intellectual property frameworks for cultural heritage. Most notably, UNESCO's 2003 Convention for the Safeguarding of the Intangible Cultural Heritage that recognizes the "deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage" of local, traditional, and Indigenous peoples, and the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) have sought to develop an international legal instrument that would give traditional knowledge, genetic resources, and traditional cultural expressions protection. Although they have yet to formalize or ratify any set of positions, their definitions stress the dynamism of tradition and the varied modalities and localities of and for traditional knowledge.¹⁴ In both cases, these organizations recognize the limits of intellectual property laws and at the same time seek to use them to intervene. That is, the expansions suggested come in the form of updated legal mechanisms and new definitions lodged within the intellectual property mechanisms already in place. Another avenue for dealing with the ill-fitted marriage of Indigenous concerns and traditional intellectual property laws is by providing *multi-pronged and extra-legal solutions* based on practical results for local communities.

Discussions stemming from the concerns that Indigenous peoples and communities have with Western intellectual property law are not new, yet they have become more urgent as digital technologies have altered how materials and knowledge are shared and circulated. Specifically, Indigenous communities face

12. Jane Anderson and Kimberly Christen, "Chuck a Copyright on it': Dilemmas of Digital Return and the Possibilities for Traditional Knowledge Licenses and Labels," in special issue "After the Return: Digital Repatriation and the Circulation of Indigenous Knowledge," eds. Joshua Bell, Kimberly Christen, and Mark Turin, *Museum Anthropology Review* 7, no.1-2 (2013): 106-126.

13. Christen, "Balancing Act," 2012.

14. World Intellectual Property Organization, "Traditional Knowledge and Intellectual Property – Background Brief," http://www.wipo.int/pressroom/en/briefs/tk_ip.html (accessed March 28, 2014).

dilemmas about how to deal with orphan works or public domain materials that are not recognized as owned by or belonging to them under the current intellectual property rights system. Given the legal and cultural complexity of this regime, it is unlikely that a singular solution could address all the problems that Indigenous peoples experience with this body of law and its ongoing implications. It is thus increasingly necessary to focus on the development of strategic solutions to issues related to the public domain and digital materials. Specifically, questions arise over and over again in varied local contexts about how to deal with multiple types of, or differing conceptions about, ownership, access, and the circulation of archival cultural materials residing in cultural institutions worldwide.¹⁵

Increasingly, local community-based digital archival projects, for both archival and cultural heritage preservation purposes, have taken on the task of managing collections. However, oftentimes these local archives are hamstrung in relation to the re-narrating, re-using, or indeed, re-mixing cultural materials that reside in other collecting institutions as they are not recognized as the authors and/or owners of the photos, audio recordings, documents, or films depicting them. In order to gain access to these cultural materials, communities must often first approach national, regional, and international collecting institutions. Repatriation movements around the world have seen Indigenous peoples demand access to, and stewardship of, their cultural heritage in varied ways.¹⁶ These movements have prompted collecting institutions to grapple with questions of how to adequately deal with collections, both in terms of recognizing the conditions that led to their acquisition and creating new possibilities for renegotiating their access, curation, and circulation. These questions often include discussions regarding the legacies of such documentation projects; how to deal with the collections related to many communities; how to incorporate Indigenous narratives, histories, and voices into these collections; and how to deal with and in fact understand what types of cultural protocols may undergird the viewing, display, and curation of the materials. Simultaneously, the increase in the use of digital technologies to manage, define access, and preserve collections has facilitated the beginning of digital return and repatriation projects that both mitigate against rigid laws and also provide avenues for dialogue and case-by-case solutions to sometimes competing ideas about the display, viewing, and circulation of some materials.¹⁷

15. Martin Nakata et al., "Indigenous Knowledge, the Library and Information Service Sector, and Protocols," in *Australian Indigenous Knowledge and Libraries* (Sydney, Australia: UTSePress, 2005).
16. Kathleen Fine-Dare, *Grave Injustice: The American Indian Repatriation Movement and NAGPRA* (Lincoln, Nebraska: University of Nebraska Press, 2002); Aaron Glass, "Return to Sender: On the Politics of Cultural Property and the Proper Address of Art," *Journal of Material Culture* 9, no. 2 (2004): 115-139; Jennifer Kramer, "Figurative Repatriation: First Nations 'Artist-Warriors' Recover, Reclaim, and Return Cultural Property through Self-Definition," *Journal of Material Culture* 9, no. 2 (2004): 161-182.
17. Joshua Bell, Kimberly Christen and Mark Turin, "Introduction: After the Return," in special issue "After the Return: Digital Repatriation and the Circulation of Indigenous Knowledge," eds. Joshua

Culture + Copyright, Copyleft, and Traditional Knowledge

Indigenous people are underserved by both traditional all-rights-reserved copyright and Creative Commons (sometimes referred to as “copyleft”) licenses that do not account for third-party ownership of material; cultural protocols and access parameters that often dictate ways of circulating material within Indigenous contexts; the fact that a significant amount of Indigenous cultural material is already in the public domain and also inevitably circulating in the digital domain; and Indigenous communities wanting to share certain material whilst also making users aware of the appropriate codes of conduct for access, use, and future circulation of that material. In their work, *Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives*, Molly Torsen and Jane Anderson show the fundamental limitations of copyright as an instrument for Indigenous peoples material, specifically the emphasis on “originality” discounts much of the cultural materials and resources that are jointly and collectively produced and cared for by local and Indigenous communities, groups, and sub-groups.¹⁸ While Creative Commons’ licenses provide a necessary intervention into the traditional copyright system that lacks a set of choices for the circulation and reuse of works, there is a need to develop a specific set of licenses that recognize the varied types of stewardship over and re-uses of Indigenous cultural material, as well as the legitimacy of already existing Indigenous knowledge management strategies.¹⁹

The Local Contexts project, which includes the Traditional Knowledge (TK) License and Label platform, grew from this legal void and the socially and culturally expressed needs within diverse sets of Indigenous communities, specifically as they seek to manage the circulation and stewardship of digital cultural heritage. Local Contexts is an educational project that aims to inform people about the existing intellectual property rights system as it relates to cultural materials and knowledge. At the same time as the project grows it will offer both an alternative set of licensing tools through the TK licenses and label generator. In addition, the overall project aims to provide a framework for discussion of other possible legal, social, and cultural interventions. While many Indigenous communities want a way to safeguard and steward their cultural heritage materials in their digital form, both internally and externally, we have seen the traditional intellectual property system offers little help for a vast amount of materials held in private collections of in the public domain.

Bell, Kimberly Christen, and Mark Turin, *Museum Anthropology Review* 7, no. 1-2 (2013): 1-21; Ann Fienup-Riordan, *Ciuliamta Akluit/Things of Our Ancestors: Yup'ik Elders Explore the Jacobsen Collection at the Ethnologisches Museum Berlin* (Seattle, Washington: University of Washington Press, 2005); Alison Brown and Laura Peers, *Pictures Bring Us Messages/Sinaakssiiksi aohtsimaahpihkookiyaawa: Photographs and Histories from the Kainai Nation* (Toronto, Ontario: University of Toronto Press, 2006).

18. Molly Torsen and Jane Anderson, *Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives* (Geneva, Switzerland: World Intellectual Property Organization, 2010), 27.

The development of the Traditional Knowledge (TK) license and label was born from these very specific needs and from years of testing and discussion on local, regional, and national levels. Over the last three years the project has been able to track both legal and non-legal strategies and listen to a range of needs expressed by Indigenous communities, individuals, groups, and organizations globally.²⁰ In addition, after testing a limited set of TK licenses in the first iterations of the Mukurtu CMS platform, it was clear that we needed a larger and more malleable framework that could work in several contexts. The Local Contexts project is a collaborative effort between Jane Anderson, Michael Ashley, and myself that grew from the Mukurtu user-test base and in conversation with international legal and cultural efforts. The TK project's aim is to develop licenses and labels that recognize, respond, and enhance Indigenous knowledge management systems.

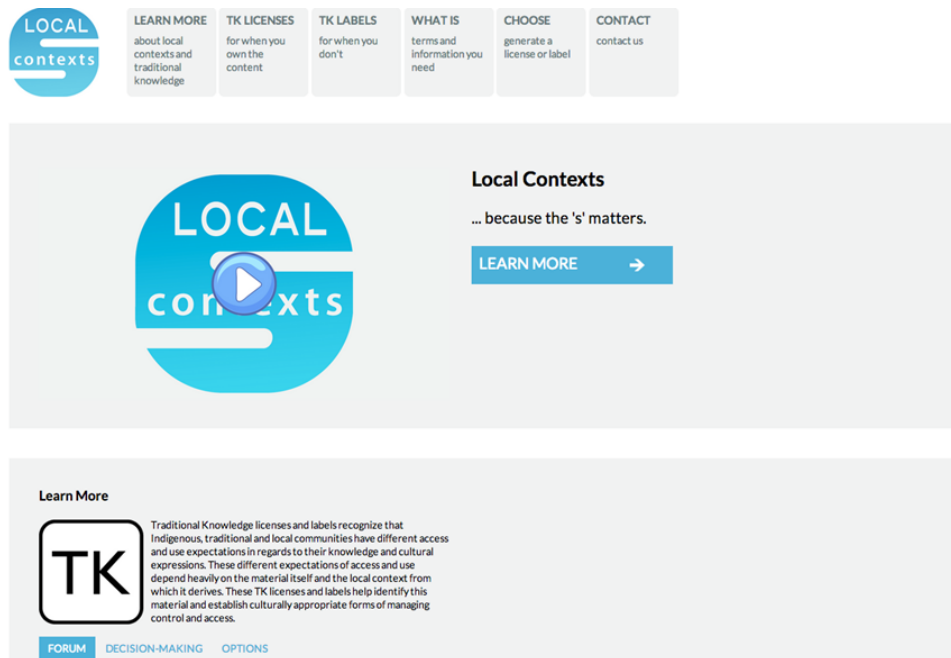


Figure 1. Local Contexts homepage (www.localcontexts.org)

19. Anderson and Christen, “Chuck a Copyright on it’,” 2013.
20. The project received funding from WIPO and IPinCH (<http://www.sfu.ca/ipinch/>) between 2009-2012. The Center for Digital Archaeology (www.codifi.org) lead the development of the website and the TK platform. Quilted Coop (<http://quilted.coop/>) provided the initial design. For a description of the work from both IPinCH and WIPO’s TK Division see World Intellectual Property Organization,

Almost all the problems that now exist in relation to intellectual property law and Indigenous cultural materials have their legacies in the uneven and unequal research practices that rendered Indigenous peoples as subjects for research and study, rather than collaborators and owners of the research outcomes and products.²¹ The Local Contexts project addresses these legacies by developing a strategy to deal with both the materials that are in the public domain and those created and owned by Indigenous peoples. Traditional Knowledge (TK) licenses and labels are *one* practical way to empower Indigenous and traditional communities to define the circulation routes and access obligations for their digital cultural materials. The TK licenses and labels are meant specifically for external use. That is, they are aimed at enabling relationships between Indigenous and non-Indigenous rights holders as well as those who want to use the materials outside of the communities. The licenses and labels themselves do different work—the licenses are a legal mechanism, while the labels are educational and social.

The TK licenses, much like Creative Commons licenses, are an extension of existing contract law and are meant to be legally defensible across multiple jurisdictions. TK licenses work for materials owned by communities or for which they hold an existing copyright. They allow communities (variously defined) to extend the terms of agreement to suit their own cultural parameters. TK licenses are not seeking to change already-existing national or international copyright law; instead they are a set of *additional* agreements that Indigenous copyright owners can use to convey culturally-specific concerns about the material that they already legally own and control. For example, TK licenses allow for general attribution of the source community alongside that of the copyright owner; direct negotiation over the integrity of the work when used in a commercial context; and the negotiation over reciprocal benefits from use within an educational context. TK licenses can only be used and applied by (or in agreement with) the original holder of the copyright, thus we see the TK licenses as a way to promote dialogue between the copyright holders and the communities to whom they belong traditionally. All of the licenses currently under development have two key components: directives for both those who maintain the rights (TK holders) and those seeking to use the materials under the license (TK users). For example, the TK Outreach (TK-O) license description reads:

TK-O Holder: This license should be used when you would only like your cultural materials used for educational outreach activities. Outreach activities mean to share works outside the community in order to increase and raise awareness and education about your family, clan, and/or community. Sites for outreach activities can include schools, universities, libraries, archives, museums, online forums, and small learning groups. Depending on the kind of context and the possibilities for increased circulation of this material, this license sets conditions for the fair and

"Supporting Indigenous Communities at the Grassroots," *WIPO Magazine*, February 2014, http://www.wipo.int/wipo_magazine/en/2014/01/article_0003.html (accessed August 28, 2014).

equitable reciprocal exchange for use of this material in outreach activities. This exchange might include compensation or access to educational or other resources that your community has difficulty accessing under other circumstances.

TK-O User: You may only use this work for outreach activities. Depending on what kind of activities designed by the TK-O holder, and the possibilities for increased circulation of this material, this license asks you to develop a means for fair and equitable reciprocal exchange for the use of this material with the relevant TK holders. This exchange might include compensation or involve access to educational or other resources that are difficult to access under normal circumstances.

Similarly, the TK Attribution (TK-A) license description provides a context for both those who hold the license and those who wish to use the material licensed as such:

TK-A Holder: This license should be used when you would like anyone who uses this material, in any way, to clearly and accurately identify your family, clan, community, or multiple communities as the source of and having responsibility for the material. The correct attribution that you would like used in all future works will be included in the text of the license to help the TK-A user.

TK-A User: You are allowed to use this material under the condition that whatever purpose you use it, you clearly attribute the original creators and custodians of this work. Depending upon the media and the use, attribution should be implemented in a reasonable manner. The TK-A license itself contains the correct attribution that has been chosen to always appear with the work. By describing and defining the rights and expectations of both the TK-A holders and users, we hope to highlight the reciprocal nature of any and all uses of these materials. That is, we are aiming to promote a conversation that extends beyond the creation of a license in order to help foster meaningful dialogue and negotiations between various stakeholders who have historically not been in dialogue.

On the site each TK license has a corresponding general description. For those who come across materials with a TK license or label, these explanations offer more information about how the materials should be used, if there are any considerations in relation to circulation and/or use, or if there is more related educational information.

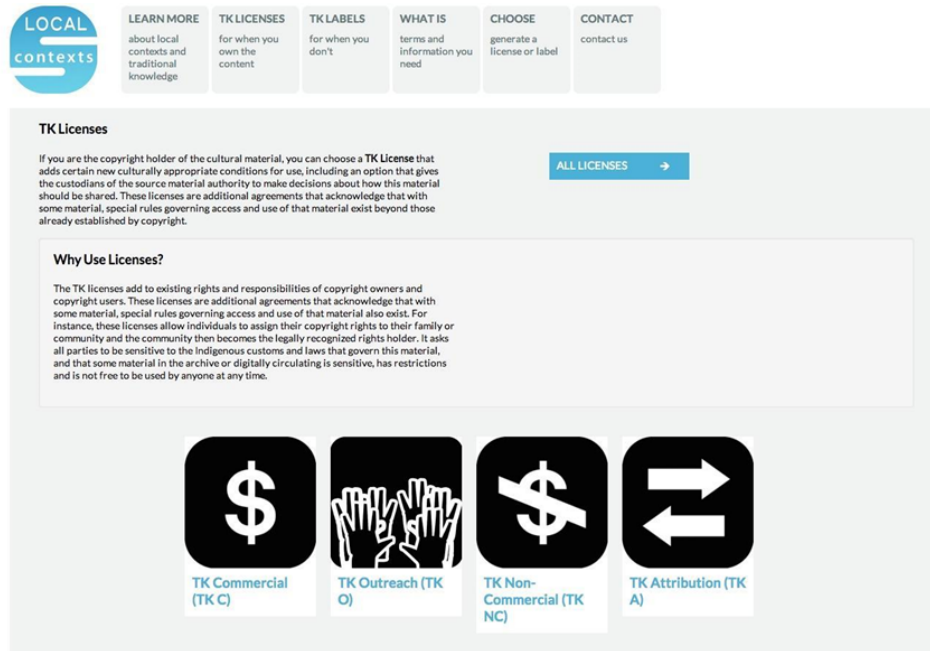


Figure 2. TK Licenses webpage (<http://www.localcontexts.org/#licenses>)

While TK licenses are being tested on materials that Indigenous people, communities, and subgroups already own or hold copyright, TK labels are *not* legally binding. Instead, they are educational and informational and apply specifically to materials for which a community does not hold copyright, or that is already in the public domain. At the beginning of the project the TK licenses were stand-alone choices. However, because so much of the Indigenous historical record, including massive amounts of academic collections, are in the public domain or owned by third parties, TK licenses cannot be applied. Due to the constructs of Western legal systems, this material cannot be re-licensed; that is, TK licenses cannot be used on materials that are already licensed or in the public domain. This legal roadblock was the catalyst for the creation of the TK labels *as a social and educational intervention*. Taking inspiration from the fair use movement and fair use labels, TK labels are not legal agreements, but are social guides for action and proper use. TK labels signal a set of cultural parameters and ask people to think about their actions carefully and thoroughly, including the various stakeholders that fall outside the legal domain.

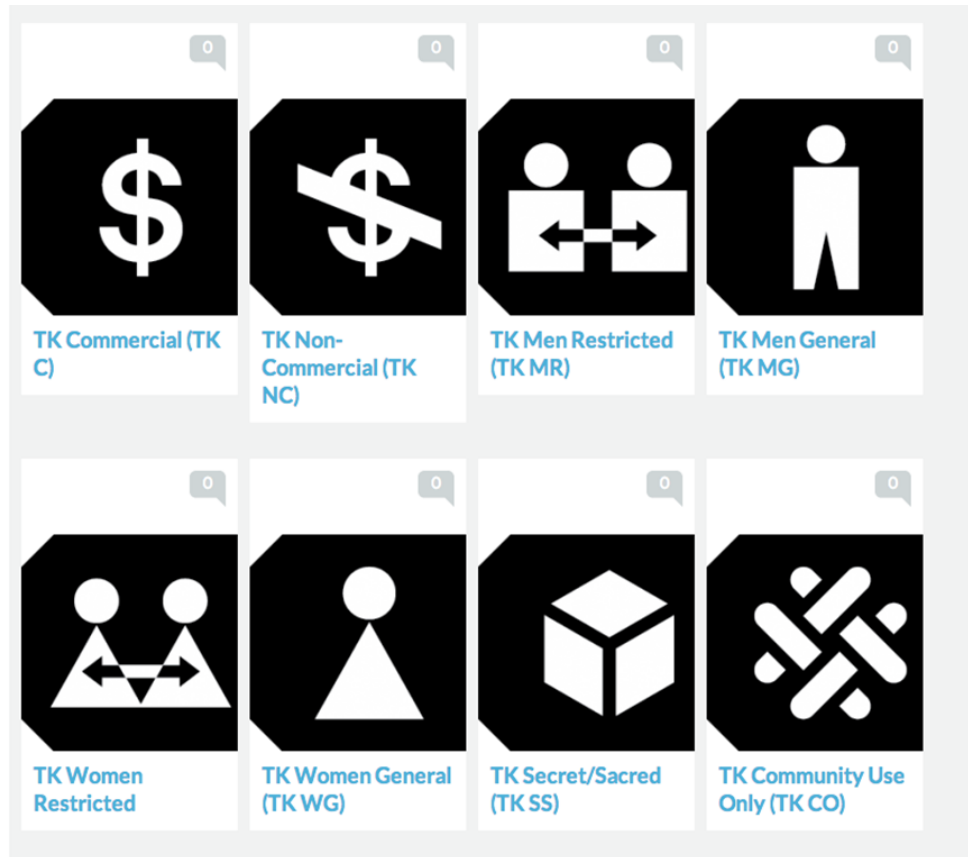


Figure 3. TK labels webpage (<http://www.localcontexts.org/#labels>)

The public domain has been a space that has been historically hostile for Indigenous peoples because much of their cultural patrimony was treated as a source of knowledge for all humankind despite its location within local cultural systems. TK labels specifically address this colonial past as well as the present day reality of a remix culture in the digital age where items found online can end up in YouTube videos or on Facebook without any attribution. TK labels seek to provide a set of guidelines for responsible digital remixing by giving users more (rather than less or restricted) information about materials they find online. The aim is to allow TK labels to be mixed and matched and have text attached to them to help users make responsible choices about *how* to or *if* to use these materials at all. TK labels will allow source communities to provide additional and often missing information about public domain material and help users make an informed decision about the best and most appropriate way of using this material, especially helping to avoid derogatory treatment.

A New Strategy: TK Licenses and Labels

Collecting institutions, be they archives, libraries, or museums, are in a unique position to tackle the educational and social aspects of our current intellectual property landscape as it pertains to Indigenous cultural heritage materials. Shifts in how and why these institutions choose to collect, manage, and define their materials can set a new tone for the circulation and use of cultural materials. The Local Contexts website (www.localcontexts.org) grows out of this need for educational and social interventions. The site is an educational and informational platform dedicated to providing information about IP generally, and TK licenses and labels specifically. The aim of the online project is to support Indigenous, traditional, and local peoples' rights to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions. Secondly, the site will also help those who wish to use the Traditional Knowledge expressions of others to develop and increase capacities for cultural awareness, cultural sensitivity, and respect for different rules regarding the access and use of specific kinds of knowledge.

The Local Contexts website's "What Is" section includes a laundry list of questions answered from the basic "*What is copyright?*" to deeper issues unpacking some of the mystery of IP and TK. We imagine this section growing as a forum for sharing the ways both the licenses and labels are and can be used, as well as space for dialogue between many types of groups and individuals who have concerns about the ways they would like to share their knowledge. In the future, Local Contexts will offer comment forums for TK users to share their experiences and ideas surrounding TK licenses and labels. As the site develops we would like to have user-generated case studies from both local communities and institutions demonstrating how they worked through processes of assigning TK licenses and labels, using other alternatives, or defining their own workflow and partnerships. Complementing the forums is a "Decision-Making" section highlighting the practical issues of negotiation within communities. The section description reads:

Using the TK licenses and labels requires individual and community decision-making. This is especially the case for material that is not owned individually, but should be controlled collectively. The decision-making processes for using these TK licenses and labels should be established before you choose which one will suit your needs. This will enable dialogue about what option best suits your needs. Each family, clan, or community will have different processes and frameworks for decision-making. Some communities are in the process of establishing cultural authorities to help make decisions about a range of IP issues facing their community. Depending on history and context, these decision-making processes will also accommodate perspectives from community members who reside in different regions.

As the platform grows we will encourage TK users to provide documentation from their communities about just how they went about creating, defining, and using the TK licenses and labels as well as other systems. Given the diversity of both

collections and Indigenous communities concerns, there is no one-size-fits-all approach to these issues. However, by setting out case studies we hope to provide a starting place for discussion and some ideas for what has worked.

As the site develops, a key component will be an automated TK license and label generator. Much like the Creative Commons model, the generator will allow individuals, community leaders, TK holders, and the like to produce their own specific licenses and labels from the options at hand. For example, a clan may create an “attribution, non-commercial” TK license for a design they own. Or, a tribal nation, such as the Yakama, may decide, through their internal community-based decision-making process, to apply a TK Attribution (TK-A) Label to public domain materials that use Yakama cultural materials. In either case, the online generator will facilitate the real-time production of a specific license or label and its associated deed and code for embedding within a digital content management system or the like. The license or label could then be part of the metadata of the record wherever it travels. Our development roadmap includes making the metadata sticky so it stays with the record thus avoiding some of the issues around attribution that exist today. Where IP laws and regulations can be very complicated and confusing, we aim for the process of generating TK licenses and labels to be both straightforward and sensible.

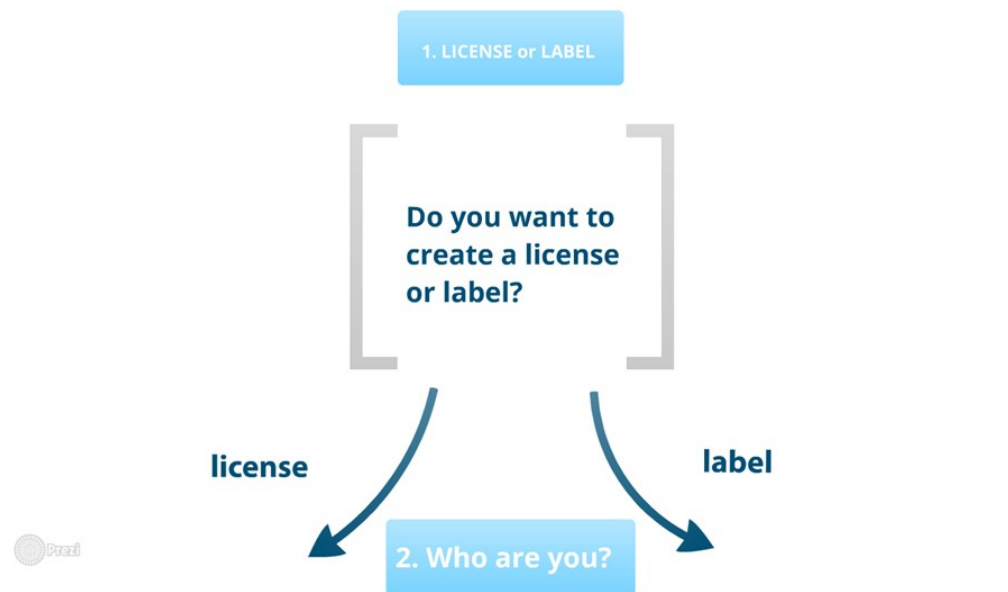


Figure 4. TK Licenses and Labels Generator model (<http://www.localcontexts.org/#choose>)

The process could work like this: tribal members from the Yakama nation museum or library would contact the Library of Congress about images they have seen online from the Edward Curtis collection. Although the Library of Congress does not own the Curtis collection, in their virtual exhibits and online catalog they could choose to add a field to their metadata for tribal TK labels. Presently the Library's online collection notice for *American Memory: Edward S. Curtis's The North American Indian* states: "Some captions and images portray ceremonial rituals and objects that were not intended for viewing by the uninitiated. *No images have been excluded or specially labeled* [emphasis added]. They are included in this digital collection in order to represent the work fully."²² With TK labels, offensive and sensitive materials could be labeled. These selected images could also, if the Library decided to do so, be covered or redacted from the online catalog, but the descriptions and TK label would remain so that viewers would still learn about the materials.

In this scenario, what viewers would see then would not be an incomplete record, but one that followed the viewing protocols of the tribe while also using textual descriptions to educate the public about the content of the missing image as well as its historical context. Alongside the original metadata from the collection, tribal representatives would add metadata about the item(s). This could be additional information such as the names of individuals; tribal knowledge about the time, place, setting, or cultural and social protocols necessary for the proper circulation of the image. The label or labels applied would signify community use and further denote appropriate use of the material by gender, age, etc. When visitors to the Library of Congress website view images with TK labels they will be presented with more information, thus expanding their knowledge and in the process seeing the overlap, connections, and richness of the histories of contact and the enduring voices of Indigenous peoples.

This type of collaborative curation and educational model has worked in the Plateau Peoples' Web Portal and in online exhibits such as the Inuvialuit Living History Project—a virtual exhibit of the McFarlane collection curated by Inuvialuit community members.²³ In both cases, substantial narrative information, metadata, and access parameters were determined collaboratively between the collecting institutions and the Indigenous communities. In the case mentioned above with the Curtis collections, the American Folklife Center at the Library of Congress could also take a proactive role. That is, as an institution, the Center could reach out to the communities listed in the Curtis photos. In the United States, and often in Canada as

21. Terri Janke and Livia Iacovino, "Keeping Cultures Alive: Archives and Indigenous Cultural and Intellectual Property Rights," *Archival Science*, 12 (2012): 151–171.

22. Library of Congress, "Sensitive Images and Text," <http://memory.loc.gov/ammem/award98/ienhtml/notice.html> (accessed March 28, 2014).

23. Inuvialuit Pitqusiit Inuuniarutait/Inuvialuit Living History, "Home," accessed March 29, 2014 <http://www.inuvialuitlivinghistory.ca/>; Washington State University, "Plateau Peoples' Web Portal," <http://plateauportal.wsulibs.wsu.edu/> (accessed March 29, 2014).

well, Tribal Councils are the best and first place to start when making contact with an Indigenous community. At WSU as a matter of protocol we contact the Tribal Councils first, maintaining our government-to-government relationship. While many communities have their own libraries, museums, and cultural centers, the Tribal Council will know whom to contact and if there is a protocol to follow in relation to the internal decision-making process.

For example, as part of an ongoing Mukurtu CMS project, we are working with the Musqueam Indian Band (MIB) in Vancouver, Canada to develop a set of customized TK labels for their archival, ethnographic, and library collections.²⁴ At every stage we follow the local protocols of decision-making. First, we work directly with the MIB's Treaties, Lands, and Resources Division to reach out to elders and community members to draft the text. Secondly, we step aside and allow the drafts of the text to work their way through the Treaties, Lands, and Resources staff, the Cultural Council, and then if necessary, the General Council. We are not privy to the discussions and decision-making process, nor do we need to be. Our role is to facilitate the discussion and then respect the MIB's own protocols.

To begin, we started with a local face-to-face set of meetings and discussions with the MIB's Treaties, Lands, and Resources team including their archivist, librarian, and GIS specialists. Recognizing and also being frustrated with the limits of the copyright system and the dearth of Musqueam materials in the public domain, the TK labels became a place to start to educate and re-define Musqueam materials. Local Contexts' TK labels were intended to be a general set of labels that could be used by communities and groups globally as a signal or flag to others that the work in question had other parameters and sets of knowledge or histories. As in the case of the Library of Congress example, general labels can be applied. What we imagined from the beginning of the project was that we also wanted a way for communities to customize the labels with their own notions of proper use, re-use, etc. In the case of the Musqueam we started with the original set of ten labels and their general descriptions²⁵ and we discussed each one-by-one to determine first if it was applicable to Musqueam and next how it should be customized to reflect Musqueam protocols, values, and histories.

The process to define this new set of labels involved Musqueam community members and elders in a face-to-face meeting with the Mukurtu team. Over two days we listened to elders describe how relations and obligations work for the Musqueam; we heard about the value of knowing one's family and history in order to truly know how to hear, see, and listen to cultural materials. In our discussions, elder Larry Grant stated, "Most importantly individuals need to know who they are and what families

24. This is a joint project between the Musqueam Indian Band, the Fetzer Institute, the Center for Digital Archaeology and the Mukurtu team at WSU.

25. The ten TK labels and descriptions can be found at <http://www.localcontexts.org/tk/label>.

they belong to the ceremonies connected to those families.” Knowing this, we updated our general set of TK labels by creating a new “family” label for both Musqueam-specific materials and a general label for any community who wishes to apply the label to their materials. This new TK Family label alerts viewers of the materials in the Musqueam collection that certain families have content knowledge and that those knowledgeable members should be consulted about the proper use and sharing of the materials. The general text reads:

This label is being used to indicate that this material is traditionally and usually not publicly available. The label is correcting a misunderstanding about the circulation options for this material and letting any users know that this material has specific conditions for sharing between family members, who these family members are, and how sharing occurs will be defined in each locale. This material is not, and never was, free, public, and available for everyone at anytime. This label asks you to think about how you are going to use this material and to respect different cultural values and expectations about circulation and use.

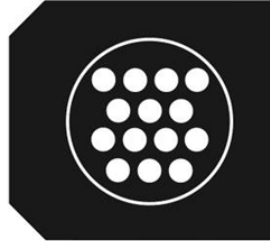
Using this general text as a basis, the Musqueam elders and community members we worked with added their own Musqueam specific text:

Family is core tenet within Musqueam teachings. Certain families have specific cultural knowledge that is not generally shared with everyone. Families may designate a certain member to be the contact for the access to and circulation of cultural knowledge and material.

If you have questions or wish to do research with a specific family please contact research@musqueam.bc.ca and view the research permitting process here <link>.

In the balance between the two versions of the TK Family label text, viewers of the material in the Musqueam archive will see that there are both some general notions of family and family sets of protocols and the very core views that the Musqueam hold. Giving people a way to contact the Musqueam was also an important step in the process of drafting the new TK label text. In our discussions with Musqueam community members they valued their own role in educating the non-Musqueam public about their cultural protocols, values, and histories. The TK labels are one way to achieve this balance of educational outreach and maintaining local cultural values and protocols around access and accountability.

TK Family (TK F)



This label is being used to indicate that this material is traditionally and usually not publicly available. The label is correcting a misunderstanding about the circulation options for this material and letting any users know that this material has specific conditions for sharing between family members. Who these family members are, and how sharing occurs will be defined in each locale. This material is not, and never was, free, public and available for everyone at anytime. This label asks you to think about how you are going to use this material and to respect different cultural values and expectations about circulation and use.

Family is core tenant within Musqueam teachings. Certain families have specific cultural knowledge that is not generally shared with everyone. Families may designate a certain member to be the contact for the access to and circulation of cultural knowledge and material.

If you have questions or wish to do research with a specific family please contact research@musqueam.bc.ca and view the research permitting process.

Figure 5. Prototype of the TK Family label under development

The Local Contexts educational project, website, and TK licenses and labels are meant to facilitate dialogue around these complex and changing situations. Unlike legal frameworks that can often divide people, Local Contexts is meant to bring people together as a springboard for many types of tools and educative devices around Indigenous peoples' intellectual property needs which are always, by definition, embedded in and derived from *local contexts*. That is, we want to highlight the fact that in all cases the historic, geographic, social and cultural contexts will always determine the parameters for interaction, use, and circulation of any and all knowledge.