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Indigenous Knowledges and Canadian Copyright Law

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Indigenous Knowledges and Canadian Copyright Law

https://library.usask.ca/copyright/indigenous-knowledges.php

Note: The information obtained from or through this site does not constitute Canadian nor Indigenous legal advice, but is provided as guidelines for using works for educational purposes.

"The world needs a university in which Indigenous concepts, methodologies, pedagogies, languages, and philosophies are respectfully woven into the tapestry of learning, research, scholarship, creativity, and community engagement." (University Plan 2025)

BACKGROUND

“The First Nations had been practising their own forms of government for thousands of years prior to the arrival of newcomers to Canada.” (Office of the Treaty Commissioner, Treaty Essential Learnings: We Are All Treaty People, August 2008, page 43)

On this page, we have used the term Indigenous Cultural Heritage to mean all components of Indigenous cultures, including but not limited to: dances, artwork, designs, stories, (oral) histories, traditions, protocols, legal systems and knowledges.

There are many essential considerations and protections in different Indigenous cultures that must be respected when you are working with Indigenous cultural heritage. These protections for Indigenous cultural heritage have not been incorporated into Canadian copyright law, and so much Indigenous cultural heritage is not considered protected under current copyright laws. (Brigitte Vézina and Alexis Muscat, Sharing Indigenous Cultural Heritage Online: An Overview of GLAM Policies, Creative Commons, August 8, 2020)

This problem was raised by Indigenous artists during the 2018 review of the Canadian Copyright Act, held by the Standing Committee on Industry, Science and Technology (INDU). The following recommendation was included in the INDU Committee’s final report on the 2018 Copyright Act review:
"Recommendation #5:

- That the Government of Canada consult with Indigenous groups, experts, and other stakeholders on the protection of traditional arts and cultural expressions in the context of Reconciliation, and that this consultation address the following matters, among others: The recognition and effective protection of traditional arts and cultural expressions in Canadian law, within and beyond copyright legislation;
- The participation of Indigenous groups in the development of national and international intellectual property law;
- The development of institutional, regulatory, and technological means to protect traditional arts and cultural expressions..."

Respect for Indigenous cultural heritage is also supported by the Truth and Reconciliation Commission’s Calls to Action. For example, call #45 (subsection four) is to “[r]econcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.”

In early December of 2020, the Liberal Government introduced a bill to "begin the process of bringing Canadian law into alignment with the United Nations Declaration on the Rights of Indigenous People (UNDRIP)." (Ryan Patrick Jones, Liberals Introduce Bill to Implement UN Indigenous Rights Declaration, Canadian Broadcast Corporation (CBC) News, December 3, 2020).

More stories related to UNDRIP and Canada's involvement:

WHY IS THIS IMPORTANT?

“Stories, you see, are not just entertainment. Stories are power. They reflect the deepest, the most intimate perceptions, relationships and attitudes of a people. Stories show how a people, a culture, thinks. Such wonderful offerings are seldom reproduced by outsiders.”


Indigenous cultural heritage has been copied, claimed, misused and misappropriated countless times. An example of Indigenous Knowledges and misappropriation can be found in the use of a sacred emblem and belonging to the Zia people of New Mexico, USA. More information about the emblem and its use can be found at the following:

- Favorite Sun by Kate Nelson, January 2019, New Mexico Magazine;
- Indigenous Knowledge Misappropriation: The Case Of the Zia Sun Symbol Explained at WIPO by Catherine Saez, December 11, 2018, Intellectual Property Watch (CC BY-NC-SA 4.0).

In Canada, the Maliseet First Nation lost many of their oral stories to Laszlo Szabo in the 1970's, when he obtained the copyright for making tape recordings of the stories. The community was able to reclaim and publish their own stories over forty years later. More information and details about this can be found at the following:

- Copyright Act Review an Opportunity to Press Feds on Aboriginal Issues by the Canadian Association for University Teachers (CAUT), October 2016, CAUT Bulletin;
- Rethinking Copyright for Indigenous Creative Works by Chidi Oquamanam, June 28, 2017, Policy Options;

Our goal in creating this web page is to acknowledge that existing Canadian copyright law is not enough, progress is needed and we have much to learn. We must follow the laws, protocols and processes (i.e., as determined by Indigenous Elders) in order to respect the circumstances under which Indigenous cultural heritage may and may not be shared.
“Legislation must be subordinate to the Constitution...This means the Copyright Act cannot infringe on constitutionally guaranteed rights giving Aboriginal Peoples control over both their tangible and non-tangible property. This reality is recognized by the courts and underlined by Canada’s position on the United Nations Declaration on the Rights of Indigenous Peoples.” Marie Battiste (Copyright Act Review an Opportunity to Press Feds on Aboriginal Issues, CAUT Bulletin, October 2016)

RESEARCH AND DATA

When conducting Indigenous research, there are many important considerations to ensure that the research is done in a respectful and good way. Memorial University has compiled a helpful, living web page of frequently asked questions about Indigenous research:

- For Researchers: Doing Indigenous Research in a Good Way

A few examples of questions included on the web page are:

- I want to work with Indigenous groups. Where do I start?
- Are there existing principles or best practices for doing research with Indigenous groups respectfully?
- How does intellectual property work with Indigenous peoples?

"The starting point for any ethical research of Indigenous knowledge and heritage must be the law of the Indigenous people being studied, which defines what constitutes property, identifies who has the right to share knowledge and property, and determines who is to benefit from and who is to be responsible for such sharing. Indigenous peoples’ knowledge and heritage are not commodities, nor are they the property of the nation-states or their researchers. Indigenous knowledge and heritage are sacred gifts and responsibilities that must be honoured and held for the benefit of future generations." Marie Battiste and James [Sa'ke']j Youngblood Henderson (Protecting Indigenous Knowledge and Heritage: A Global Challenge, 2000, page 144)

Research and Data - Books/Journal Articles


### Research and Data - Online Resources

- [AfricArXiv](#), The Pan-African Open Scholarly Repository;
- [CARE Principles for Indigenous Data Governance](#);
- [Collaboratory for Indigenous Data Governance](#), Research, Policy, and Practice for Indigenous Data Sovereignty;
- [Data Conversations – Indigenous Data and Its Discontents](#) by Deborah Lee, Kevin Read, Sarah Rutley, and Catherine Boden, October 20, 2020, Brain-Work: The C-EBLIP Blog, University Library, University of Saskatchewan;
- Decolonizing Digital Series, Indigenous Innovation:
  - Decolonizing Digital: [Contextualizing Indigenous Data Sovereignty](#)
  - Decolonizing Digital: [Empowering Indigeneity through Data Sovereignty](#)
  - Decolonizing Digital: [Data's Role in Indigenous Data Sovereignty](#)
  - Decolonizing Digital: [The Future is Indigenous](#)
  - Decolonizing Digital: [Our Data is our Right](#)
  - Decolonizing Digital: [Developing Indigenous Digital Innovation](#);
- [Global Indigenous Data Alliance](GIDA);
- [Indigenous Research Methodologies](#), University of British Columbia;
- [Indigenous Studies](#), Research Guide, University of Saskatchewan;
- [IPinCH](#) (Intellectual Property Issues in Cultural Heritage: Theory, Practice, Policy, Ethics), Simon Fraser University;
- **Open Dialogues: Daniel Heath Justice on Decolonizing Open** by Will Engle and Valeria De La Vega, August 19, 2020 (CC BY-NC 4.0);
- **Open Science Beyond Open Access: For and with communities. A step towards the decolonization of knowledge** by Chan, L., Hall, B., Piron, F., Tandon, R., and Williams, L., July 2020, Canadian Commission for UNESCO’s IdeaLab, Ottawa, Canada (CC BY-NC 4.0);
- **Perspectives on Openness: Honouring Indigenous Ways of Knowing**, YorkSpace, York University, October 20, 2020 (CC BY-NC 4.0);
- Research Data Management: **Indigenous Data Sovereignty**, Research Guide, University of Saskatchewan;
- **Rez Does and Open Access** by Jessie Loyer, Can we Decolonize Open? An Open Access Week Event at KPU Richmond, October 22, 2019, Kwantlen Poltechnic University;
- **The First Nations Principles of OCAP®, First Nations Information Governance Centre** (FNIGC);
- **United States Indigenous Data Sovereignty Network**;
- **World Intellectual Property Organization** (WIPO).

**RESOURCES IN CURRICULUM**

- **Aboriginal Research Resources**, University Library, University of Saskatchewan;
- **First Nations, Métis, and Inuit Content & Perspectives Across the Curriculum** (FNMI, First Nations, Métis, Inuit, Aboriginal, Aboriginal ways of knowing, Aboriginal perspectives, K-12 curriculum) Research Guide, University of Saskatchewan;
- **Indigenizing Academia** by Stryker Calvez, Gwenna Moss Centre for Teaching and Learning, University of Saskatchewan;
- **Indigenous Films**, Research Guide, University of Saskatchewan;
- **Indigenous Inclusion**, The Learning Portal, College Libraries Ontario, (CC BY-NC 4.0);
- **Indigenous Saskatchewan Encyclopedia**, University of Saskatchewan;
- **iPortal** (Indigenous studies portal research tool), University of Saskatchewan;

**STYLE GUIDES**

• **Editing and Reviewing Indigenous Research & Writing** by Geoffrey Boyd and Vanessa Welz ([CC BY-NC-SA 4.0](https://creativecommons.org/licenses/by-nc-sa/4.0)) – Based on G. Younging book, Elements of Indigenous style: A guide for writing by and about Indigenous Peoples.

**CITATION GUIDES**

University of Saskatchewan [Citation Style Guides: Citation Styles](https://library.usask.ca/research/citation-guides) research guide (citing Indigenous Elders and Knowledge Keepers in both APA and MLA styles):

- **APA** page;
- **MLA** page;
- in-text citation page of the APA Citation Style guide; and
- Indigenous Elders and Knowledge Keepers on the APA Citation Style guide.

These templates were first developed by Lorisia MacLeod, a librarian at NorQuest College in Edmonton, in consultation with Elders and other librarians. We appreciate and acknowledge the time and effort it took to develop these guidelines. ([CC BY-NC-SA 4.0](https://creativecommons.org/licenses/by-nc-sa/4.0)) ([NorQuest Details and Exceptions](https://norquestlibrarylibrary.wilsonlibrary.com/library/)

- NorQuest College Library: [Referencing Indigenous Elders and Knowledge Keepers](https://norquestlibrarylibrary.wilsonlibrary.com/library/)

**SUI GENERIS PROJECTS**

Sui generis is a Latin phrase that means "Of its own kind or class; i.e., the only one of its own kind; peculiar." ([The Law Dictionary](https://www.lawdictionary.org/), featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.)."In the context of the Traditional Knowledge discourse, the term is commonly used to describe new laws and legislation developed exclusively to protect Traditional Knowledge." (Greg Young-ing, [Intellectual Property Rights, Legislated Protection, Sui Generis Models and Ethical Access in the Transformation of Indigenous Traditional Knowledge](https://theses.usask.ca/theses/3708/), Thesis, October 2006)

There are ongoing projects from countries and regional organizations which help to protect Indigenous cultural heritages. It is the goal of these projects to offer ways of protecting Indigenous heritage that are not included in colonial copyright laws.

- [Compilation of Information on National and Regional Sui Generis Regimes for the Intellectual Property Protection of Traditional Knowledge and Traditional Cultural Expressions](https://www.wipo.int/ TransparentDB/), dated May 7, 2020. World Intellectual Property Organization (WIPO);
- [Local Contexts](https://www.wipo.int/ TransparentDB/) (Traditional Knowledge (TK) Labels and Licenses) ([CC BY-NC-ND 4.0](https://creativecommons.org/licenses/by-nc-nd/4.0))
"...an initiative to support Native, First Nations, Aboriginal, and Indigenous communities in the management of their intellectual property and cultural heritage specifically within the digital environment."

- **Mukurtu** (MOOK-oo-too) Content Management System (CMS)
  - "The free, mobile, and open source platform built with Indigenous communities to manage and share digital cultural heritage."

"Some years ago, Elders told stories at a conference; they had a storytelling conference. The people who brought this gathering together took those stories which were told…and the editor, a non-Indigenous person, then put this collection together, for which a copyright was made to her. So Indigenous peoples are asking, ‘If I give you this [story], you take it and say: this is my property, when it’s my story. And my story belongs not to me but it is created by a collective effort of my community. The story doesn’t come because I’m an individual. It comes because I’m in a particular culture, in a particular language, in a particular situation that has been collectively acquired and developed through the collectivity’. So it’s a collective effort, it’s a collective issue. In the book that we wrote about protecting Indigenous knowledge and heritage, this was one of the issues: Who owns the works of Indigenous people when they are collectively created?" Marie Battiste (Prepared by Lee, Deborah, Smith, David A., and contributions by Gagné, Mary-Lynn, *University Library Report on the Ithaka S+R Study on Improving Library Resources and Services for Indigenous Studies Scholars: University of Saskatchewan Context*, October 30, 2018, University of Saskatchewan)

**CULTURAL APPROPRIATION**

What examples come to mind when you think about cultural appropriation? If you do an online search of Native American Halloween costumes, results will include an abundance of images of non-Indigenous people of all ages wearing "inspired" costumes with headdresses, weapons and are then posed in a stereotypical fashion. Or, Pharrell donning a headdress for a magazine cover. Is this cultural appropriation? What about Grey Owl? An Englishman assuming the identity of an Indigenous person and their heritage. Imagine you attend a gallery exhibit of art "inspired" by Indigenous art, but created by a non-Indigenous person. Does that art still have the same meaning and value behind the style, shapes, lines, patterns, form, beings, and colours represented in it? Consider the following articles:

- *'Headdress’ is a doc you need to watch — especially on #NationalAboriginalDay* by CBC Life, Updated June 21, 2017, Canadian Broadcast Corporation (CBC) News;
Fake Art Hurts Indigenous Artists as Appropriators Profit by Francesca Fionda, November 30, 2018, the Discourse;

Cultural Appropriation Keeps Happening Because Clear Laws Simply Don’t Exist by Brigitte Vézina, December 22, 2019, Toronto Star.

These examples of cultural appropriation, as well as additional readings listed in the Book / Journals and Online subsections below, demonstrate the importance of respecting and protecting the traditions, stories, spirituality and culture present in much Indigenous art. There are inherent issues in non-Indigenous peoples capitalizing on Indigenous work without acknowledgement or permission. For so many years, the cultures of Indigenous groups and Indigenous people of Canada have been stripped from them because of the Indian Act enacted in 1876, residential schools (1880's to late the 1990's) and the Sixties Scoop. In its own way, cultural appropriation is a continuation of this mistreatment.

Cultural Appreciation

But, what if I want to wear something that was designed and sewn by an Indigenous artist like moccasins, purchase handmade items at the Graduation Powwow, or wear a ribbon skirt to a smudging ceremony at the Gordon Oakes Red Bear Student Centre? Yes, yes and YES!

Author and radio host Rosanna Deerchild states that cultural appreciation, "truly honours our nations’ arts and cultures. You take the time to learn and interact, to gain understanding of a culture, or cultures, different from your own. It is a cultural exchange based on mutual respect and the key is consent and participation. If it is about us, it must include us.” (Cultural Appropriation vs. Appreciation, June 1, 2017, Canadian Broadcasting Corporation (CBC) News)

Cultural Appropriation – Books/Journal Articles

- Cultural Appreciation of Contemporary Indigenous Music in Canada, UBC Wiki, University of British Columbia;
- Cultural Appropriation of Indigenous Cultures In North America by Natasha Byrne, January 11, 2021, U Multicultural Channel;
- Cultural Appropriation vs. Appreciation, Elementary Teachers' Federation of Ontario (ETFO);
- How to Culturally Appreciate and Not Culturally Appropriate by Donia Tazi, December 9, 2015, Dazed;


**Cultural Appropriation – Online Resources**

• [*Curbing Cultural Appropriation in the Fashion Industry*](#) by Brigitte Vézina, CIGI Papers No. 213, April 3, 2019, (CC BY-NC-ND 3.0);

• [*Cultural appropriation vs. artistic licence: How far have we really come?*](#) by Zuelkha Nathoo, updated May 14, 2017, Canadian Broadcast Corporation (CBC) News;

• [*Cultural Appropriation in Fashion: Is Copyright the Answer?*](#) by Brigitte Vézina, ABC Copyright Conference 2019 presentation (CC BY-NC-SA 2.5 CA), HARVEST;

• [*Ensuring Respect for Indigenous Cultures: A Moral Rights Approach*](#) by Brigitte Vézina, CIGI Papers No. 243 — May 29, 2020, (CC BY-NC-ND 3.0);

• [*From ‘Appropriation Prize’ Controversy, A New Indigenous Writing Award is Born*](#) by Marsha Lederman, October 19, 2017, The Globe and Mail;
  o [*Indigenous Voices Awards*](#), organized by *Indigenous Literary Studies Association* (ILSA);

• [*Guide to Intellectual Property and Copyright*](#), Shared Spaces, University of Saskatchewan Art Galleries & Collection;

• [*Native/American Fashion: Inspiration, Appropriation, and Cultural Identity*](#) symposium (April 22, 2017 - YouTube, PDF Guide), National Museum of the American Indian;

• [*On Cultural Appropriation, Canadians Are Hypocrites*](#) by Robert Jago, updated Nov. 11, 2019, The Walrus;
  o [*Introducing B.C.'s Hairy Giants*](#) by J. W. Burns, April 1, 1929, Maclean's;

• [*Protect and Promote Your Culture - A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities*](#), 2017, World Intellectual Property Organization (WIPO) (CC BY 3.0 IGO);

• [*Why Cultural Appropriation is Disrespectful*](#), October 04, 2020, Indigenous Corporate Training Inc..
ADDITIONAL RESOURCES

Books


Online Resources

- *ē-micimināyakik* - Museums, Cultural Centres, Archives, Interpretive Centres & Libraries Gathering on May 2-3, 2019; hosted by *Saskatchewan Indigenous Cultural Centre* (SICC);
- *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (IGC), World Intellectual Property Organization (WIPO);
- *Office of the Treaty Commissioner*;
- *On-Screen Protocols & Pathways: A Media Production Guide to Working with First Nations, Métis and Inuit Communities, Cultures, Concepts and Stories* by Marcia Nickerson;
- *United Nations Declaration on the Rights of Indigenous Peoples*, article 11, sections 1 and 2, United Nations, Department of Economic and Social Affairs Indigenous Peoples.
LAND ACKNOWLEDGEMENT

"As we gather here today, we acknowledge we are on Treaty 6 Territory and the Homeland of the Métis. We pay our respect to the First Nations and Métis ancestors of this place and reaffirm our relationship with one another."

University Council

As Treaty people, we recognize that treaties are “mutually beneficial arrangements that guarantee a co-existence between the treaty parties. Newcomers and their descendants benefit from the wealth generated from the land and the foundational rights provided in the treaties. They built their society in this new land where some were looking for political and religious freedoms. Today, there are misconceptions that only First Nations people are part of the treaties, but in reality, both parties are part of treaty. All people in Saskatchewan are treaty people.” (Office of the Treaty Commissioner, Treaty Essential Learnings: We Are All Treaty People, August 2008, page 16)

If you are interested in writing your own land acknowledgement for your class, presentation, personal or reconciliation reasons, find below some resources to help guide you.

- Indigenous Voices Program, Gwenna Moss Centre for Teaching and Learning, University of Saskatchewan;
- Land Acknowledgements, Gwenna Moss Centre for Teaching and Learning, University of Saskatchewan.

“as long as the sun shines, the grass grows and the rivers flow” (Statement of Treaty Issues : Treaties as a Bridge to the Future, Office of the Treaty Commissioner, October 1998, page 61)

GETTING HELP

If you have any questions or concerns about copyright, please let us know!
Kate Langrell, Copyright Coordinator
122.13 Murray Library
(306) 966-8817, copyright.help@usask.ca

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