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NATIVE LANGUAGE PRESERVATION
A REFERENCE GUIDE
FOR ESTABLISHING ARCHIVES AND REPOSITORIES

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Native Languages Archives Repository Project

Reference Guide



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Endnotes for Building a Physical Repository

¹ <http://www.usdoj.gov/crt/ada/adahom1.htm>. Last accessed 11/22/04.

ⁱ Parks, Douglas. “Genesis of the Project.” *Revitalizing Indigenous Languages*, edited by Jon Reyhner, Gina Cantoni, Robert N. St. Clair, and Evangeline Parsons Yazzie (pp. 59-83). Flagstaff, AZ: Northern Arizona University. Copyright 1999 by Northern Arizona University.

ⁱⁱ The Dublin Core is a cross-disciplinary effort to define elements that help in searching for information on the Internet. The Dublin Core Element Set comprises fifteen elements which together capture a representation of essential descriptions of resources available through libraries of documents and text on the Internet. Usually the Dublin Core is used in relationship to metadatabases. Metadata is “data about

data, or information known about an image in order to provide access to the image. Usually includes information about the intellectual content of an image, digital representation data, and security or rights management information.”ⁱⁱⁱ Internet enabled databases are databases designed to function effectively in Internet environments.

ⁱⁱⁱ Indigenous Language Institute. 2000-2004. “Lenape Lessons Now Available on CD-ROM.”

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^{iv} This Internet site can be accessed at <http://ulukau.org/english.php>. Accessed on October 22, 2004.

^v Stauffer, Bob. 7/23/04. “Notes on the Hawaiian electronic library project for Suzan.” Correspondence between Bob Stauffer and Suzan Harjo.

^{vi} American Indian Studies Research Institute. Accessed on October 22, 2004.

http://www.indiana.edu/~aisri/the_institute/index.html.

^{vii} American Indian Studies Research Institute. <http://www.indiana.edu/~aisri/projects/idd/idd.html>. Accessed on October 22, 2004.

^{viii} To parse a sentence is to divide a sentence into its elements, pointing out the parts of speech and their relationship to each other. It is to describe or analyze a sentence’s grammar.

^{ix} In linguistics a gloss is a shining, or a clarifying, or a highlighting of a word or phrase.

^x American Indian Studies Research Institute Accessed on October 22, 2004..

<http://www.indiana.edu/~aisri/projects/atp/atp.html>.

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^{xiii} Hunter, Jane, Koopman, Bevan, and Sledge, Jane. September 2002. “Software Tools for Indigenous Knowledge Management.” http://archive.dstc.edu.au/IRM_project/software_paper/IKM_software.html. Accessed October 26, 2004.

^{xiv} Sybase. October 28, 2003. “Distributed Database.” [searchDatabase.com](http://searchdatabase.com) Definitions.

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^{xx} *Almasude, Amar. 1999. “The New Mass Media and the Shaping of Amazigh Identity.” Revitalizing Indigenous Languages*, edited by Jon Reyhner, Gina Cantoni, Robert N. St. Clair, and Evangeline Parsons Yazzie. Flagstaff, AZ: Northern Arizona University.

^{xx} “Tohono O’odham (Papago) Literature. June 9, 2004. <http://www.indigenouspeople.net/papago.htm>. Accessed October 29, 2004.

^{xxi} <http://www.usdoj.gov/crt/ada/adahom1.htm>. Last accessed 11/22/04.

Endnotes for Hazardous Materials and Contaminated Objects in Archive and Museum Collections

^{xxii} <http://www.cdc.gov/nasd/docs/d001001-d001100/d001027/d001027.pdf> Last accessed 12/18/04.

^{xxiii} National Park Service, Conserve O Gram, Number 2/3, Arsenic Health and Safety Update, September 2000.

^{xxiv} Health and Human Services, Agency for Toxic Substances and Disease Registry

<http://www.atsdr.cdc.gov/tfacts2.htm> Last accessed 12/21/04.

^{xxv} National Park Service, Curatorial Safety, January 2003, “Have Your Curatorial Areas Been Tested for Radon?”

^{xxvi} National Park Service, Conserve O Gram, No. 2/10, August 1998. “Hazardous Materials In Your Collection”.

^{xxvii} www.mgfns.wa.gov/resources/Research/hazardousmuseum.php. Last accessed 11/17/04.

^{xxviii} <http://www.nedcc.org.plam3/leaf311.htm> Last accessed 12/20/04.

^{xxix} <http://www.palimpest.stanford.edu/byauth/jessup/ipm.html> Last accessed 12/20/04.

^{xxx}ⁱ National Park Service, Conserve O Gram, No. 3/9, May 1999. "Anoxic Microenvironments: A Treatment for Pest Control".

^{xxx}ⁱⁱ National Park Service, Conserve O Gram, No. 3/8, August 1998, "Controlling Insect Pests: Alternatives to Pesticides".

^{xxx}ⁱⁱⁱ Abbey Newsletter, Vol. 18, No. 6, October 1994. "Mold as a Threat to Human Health".

^{xxx}^{iv} Abbey Newsletter, Vol. 26, No. 6, October 2003. "Chlorine Dioxide: A Treatment for Mold In Libraries".

^{xxx}^v http://www.cdc.gov/ncidod/diseases/hanta/hps_stc/stc_spot.htm. Last accessed 12/07/04.

Chapter 4: How to Build Infrastructure to Preserve Native Language Materials

WHAT IS INFRASTRUCTURE?

Infrastructure is the underlying framework of a system. Here, infrastructure means designing the way in which a Native language repository system will function. This includes describing the interrelationships between human resources, physical locations of materials and access points, the hardware needs for various programs and ethical standards for use of cultural properties.

In designing and implementing the repository, the planners must consider the need for processes to be used in sharing materials. Among these will be the need:

- to protect original materials;
- to assure that materials are used for language purposes of the community;
- to regulate outside access to materials; and
- to provide copies of materials, when appropriate, to national, regional, tribal and language program repositories.

To implement this planning, the repository will need to develop written standard operating procedures, train staff to use these procedures and approve the necessary administrative forms and enforcement procedures.

The purpose for this planning should be the goal of making language materials, wherever they may be located, accessible where they are most needed -- in Native communities. The repository planners should also recognize that such access will probably increase as the language program increases its use of technology. This will mean training all those who will be using the repository to improve the teaching and learning of the language. This chapter describes a proposed infrastructure to reach the goal of using the language materials to best serve the needs of all those who will benefit from using them to preserve the language.

The Native Languages Archives Repository Project has focused on the need to provide an orderly system of support for accessing language materials by Native language activists in the community and elsewhere. This addresses the human aspect of the system by setting forth ethical considerations, training requirements, non-Native access and regulation, sharing considerations, enforcement of regulatory requirements and the development of a system of standard operating procedures to assure the smooth functioning of the infrastructure.

How Native communities or organizations deal with or develop their own internal administrative systems is not specifically addressed here because of the great diversity that exists, as well as their independent right to adopt their own systems. Instead, the general organizational ideas for an infrastructure are presented in a way that ought to allow for those making decisions about the repository to discuss how to improve access to the materials for all who would benefit from that access.

The overall concept of any infrastructure is of a bridging nature, in the sense of recognizing the separateness of Native communities, organizations and institutions of higher education.

Human Resources

There are many different types of people who should be involved in a language program. Among the most important are those people who already speak the language. Some may be reluctant to participate, for a number of reasons. Those working in the language may need training in the use of materials, instruction on the use of technology and information on learning and teaching methods. In some tribes and language communities with few speakers, care should be taken to try to persuade them to participate. Some may be passive speakers who understand the language, even though they have not spoken it much. Their knowledge is valuable because they may have extensive vocabulary knowledge

and they know how the language is supposed to sound. Another issue to be taken into consideration is participation by people who have less than their full set of teeth. They may be uneasy about participating because they know that they have a hard time pronouncing the language correctly. There may also be people who are not fluent, but who may have knowledge of specialized vocabulary in areas like crafts. Of course, some of these people may not live on tribal lands, and finding them may be a challenge.

Other people who should be involved are professional educators, who are aware of the many types and systems of teaching and learning models, appropriate techniques for the teaching of different types of languages and methods of testing fluency to evaluate the language program. These educators need the cooperation of the language teachers to do their work effectively, especially if they are participating in the design of the materials.

The program may also wish to consider using specialists as evaluators. Among these would be historians and anthropologists to help find older materials and linguists to help with the design of methods and materials.

Place

The learning place may be on or off tribal, intertribal or community lands. Therefore, tribal, intertribal or community control or support may be different depending on location. Some programs may want to consider the security of materials within their workplace; it may be very difficult to replace stolen materials.

There is much information in other parts of this Reference Guide to assist those planning space for their own repositories. As our Archivists have stated, consider light, humidity and temperature, as these may have a bad effect on the condition of materials. Basements are usually poorly suited for storing archival materials.

The use of technology in the learning place should also be planned for; technology may require extensive remodeling of older structures, often called retro-fitting. Technological change is inevitable and this should be considered in planning and designing space for the repository. New structures should fit the group's cultural ideas of structure as well as provide for newer technology that may be helpful.

Types of Programs

There are many types of language programs, both on or off tribal or community lands. Programs may vary, for example, in the amount of formality, numbers and types of students (Native and non-Native, children or adult, etc.), who is sponsoring the program and length of time students are taught. Some types of programs are described below.

1. Tribally-run or community-run programs. These may be, for example, a part of a tribally-run or community-run Head Start program, after school program, special summer program or a program through a tribal, intertribal or community television, radio or web program. Although the tribal government, intertribal coalition or language community organization may have more control over these kinds of programs, much care must be given to insulating them from politics, as changes in personnel often disrupt the production and safeguarding of materials as well as affect the quality of teaching.

2. Privately-run programs. These programs may be particularly cautious in their dealings with the tribal government or intertribal coalition, as they value their independence. They should be approached in the spirit of cooperation. They may value support from the tribal government or intertribal coalition in the form of assistance in recruiting instructors and resource people, cooperation from the tribal education and cultural programs and, of course, funding.

3. Elementary and secondary school programs. These may be run by a public school district, a tribe, an intertribal coalition, a language community, the BIA or a private institution. These schools may all be impacted by the need to comply with state certification standards for language instructors. These standards can often be negotiated through agreements between the tribe and the state's education department, for example. Such an agreement is usually called a Memorandum of Understanding (MOU) or a Memorandum of Agreement (MOA).

4. College and university programs. These programs are especially valuable as they may provide instructors for the other programs. Although some of these people may seem far removed from the program's planners and instructors, they may have knowledge of language instruction or access to finding historical or other materials that may be vital for the success of the program. They may also be a resource for professional skilled work. It may be particularly important for these institutions to receive copies of teaching materials to use to teach students to work from these materials. Indian institutions of higher education, such as the Institute of American Indian Arts and tribal colleges and universities should be given special consideration.

5. Informal programs. These may be as simple as grandparents regularly meeting with grandchildren, elders speaking the language during a tribe's senior lunch program, or small groups meeting in the evening with speakers. These programs are valuable because the participants are doing this voluntarily. Any suggestions or materials provided to these groups may be much appreciated; however, great care must be taken to avoid inadvertently crushing the initiative of these groups.

In the interest of coordination, whatever can be done to encourage cooperation in the sharing of information between these programs would probably improve the language's chance of surviving. The appropriate uses of traditional knowledge could be included in this cooperation.

ETHICAL STANDARDS FOR USE OF CULTURAL PROPERTIES

A priority consideration for each language program is the relationship between the preservation of language materials and the preservation of other cultural property. It would be good if the programs were coordinated to the extent that each is aware of what the other holds and of the methods used to preserve the materials. Those with existing Codes of Ethics may wish to incorporate and amend them to accommodate infrastructural concepts that are presented in this chapter.

Each program should become aware of the Native nation's or language community's formal or informal directions on the use of cultural materials. Guidance may have to be sought from the governing body, the cultural program, tribal attorney or other authority.

Usually, the directives will have to do with restrictions on the use of materials, but also may include directives on contacts with outside people.

CONSIDERATIONS IN SHARING MATERIALS

Each language program must take care in the gathering of information for the creation of materials for the use of the program, and perhaps for later deposit in a national repository, that each piece of information is carefully designated as to its source and any conditions, instructions or restrictions.

In gathering information, care must be taken to assure that the individual giving the information understands that:

- the information will be used to develop materials for the use of teaching the language;
- the materials will be preserved;

- the students of the language may or may not include tribal members, as the case may be;
- the materials may or may not be made available to people other than students, including those preparing the materials, those revising the materials, a funding agency, researchers, those preparing materials for other languages and others, as the case may be; and
- the copies of the materials may be deposited in a national repository, where their use may be restricted by the program that is gathering the information.

It is usually appropriate to clearly allow for the sharing of the information with the descendants and/or the extended family of the person giving the information, and/or of that person's clan or other cultural or social group.

It may be that the information giver objects to one or more of the uses of the information to be given, in which case a reasonable accommodation should be negotiated.

If there is not informed consent to the uses of the material, the information should not be used.

It may be prudent to prepare a consent form along the following lines to be signed by those giving information. A model consent form has been provided in the second part of this chapter.

Preparers of material should also clearly understand the uses of the material they prepare and should be made aware of any restrictions on the uses of specific information in the preparation of the materials. In addition, they should clearly understand any contract they sign regarding the ownership of the copyright of the materials.

A simple statement, such as the following, should be sufficient:

“I understand that the copyright to the materials I prepare belongs to _____, meaning that _____ alone will have the power to publish copy and use the materials.”

If there are restrictions on the students using the materials, these restrictions should be explained to the students in an age-appropriate manner at the beginning of each term.

If there are restrictions on the use of the materials by people outside the program, these should be clearly stated before the person is allowed to examine the materials.

It may be prudent for the program to design a form along the lines of a “Consent to Restrictions” form for the person to sign. A model form is provided in the second part of this chapter. The important elements of the form are the signer's statement that the restrictions have been explained, are understood and will be followed.

A record should be kept of each time materials are examined, including which materials were examined and the name of the examiner.

In addition to restrictions by those who give information to use in preparing the materials, the language program, especially if it is not a tribal program, should seek and consider restrictions desired by the tribe's or tribal coalition's governing body, its cultural program, its social structure and others knowledgeable in the culture of the tribe(s) and cultural context of the language. If the program chooses not to follow a proposed restriction, then an explanation of why the program will not follow the restriction should be prepared and given to the proposer of the restriction. This document may be of use in negotiating an accommodation with the proposer.

If restrictions have been placed on materials or information, care must be taken to safeguard and monitor access to the materials.

Culturally sensitive materials must be carefully provided for. Any consultation about culturally sensitive material must begin with the supposition that there are things the language program does not know. The language program should respect the sacred knowledge contained in rituals and ceremonies and not force the religious practitioners to participate if they do not desire to do so. Because of the tradition of sharing, programs must be very careful not to force or pressure the religious practitioners into sharing their knowledge.

Because some materials may be culturally sensitive, programs must be careful when sharing materials with non-Natives, or Native people who may not be qualified to share the materials.

In considering the sharing of materials, the program may wish to give special consideration to programs from other tribes or communities who share the same or a similar language.

The preservation of the materials, as well as the information from which the materials were developed, is crucial for the preservation of the culture. There is much information on preservation in the second part of this Reference Guide. The program must do its utmost to assure that all materials are appropriately preserved. This may include moving the materials to another format -- for example, from CD to microfiche -- and preserving a duplicate of the materials off site at a secure location. Fragile materials should be protected, especially when being duplicated.

The program should designate someone to serve as the monitor for its preservation efforts, as knowledge about preservation methods is constantly changing. It is now recognized that certain types of paper, usually called "archival" paper, preserve better. In general, microfiche is now believed to last the longest of all materials. Digital materials are difficult to preserve because the format used for the hard copy, like "floppy disks," may eventually become unreadable without older equipment. Also, digital formats may deteriorate over time. There is much information available on these issues from professional archivists and provided elsewhere in this Reference Guide.

Any restrictions on the use of information or materials must be stated in clear, easy to understand language, in order to protect against misuse of the restriction.

Any person making copies of the program's material must be made aware of copyright restrictions on the use of the materials. This can be done through a stamped statement on each page of the copies or through a statement attached to the materials. Such a statement should read: "These copies may be used only for scholarly or research purposes." The use of the copied materials may also be restricted to a particular use, such as research.

How Materials Can Be Shared

Once restrictions are understood, their application must be clearly followed.

Internal Application

Within the program, the information and materials should be shared with all of those concerned with the preparation, use, evaluation and revision of the materials. If the people engaged in those functions are not program employees, a consent form detailing appropriate restrictions should be used. The "Consent to Restrictions" form could be used for this purpose.

Within the community of those interested in the language program, the restrictions must be stated before the materials are shared or discussed.

Consideration should also be given to sharing knowledge with tribal programs besides those on language and culture. These may include youth and elder programs, any program dealing with the geography of tribal areas, sacred sites, health and social services programs. All programs would benefit from knowing how the work they do is expressed in the language.

Within the Native nation or language community, in any sharing of the materials, the restrictions must be stated, especially if the restrictions have not been the subject of earlier discussion.

External Application

Those with whom the materials should be shared include persons who may be of assistance in revising the materials or improving instruction; a funding agency, if there is a legal obligation to do so; those seeking assistance in designing their own language programs; those researching for scholarly purposes, as their research may lead to improvements in the teaching of languages; and a national repository, if the Native nation or language community wants to participate, in whole or in part, in a national repository system.

In explaining any restrictions on the material, care should be taken to explain the rationale for the restriction, particularly if the person is expected to sign a consent form. For example, it could be explained that a portion of the materials relate to religious ceremonies that the tribe, clan, society or moiety does not wish to have publicized, or that some of the materials relate to incidents in the life of the person who gave the information and s/he does not want that publicized.

A form should be prepared for the signature of outside people seeking to examine the materials. The form should state:

- 1) that the program is acknowledged as the source of the materials;
- 2) the reason why access to the materials is desired;
- 3) the consent to restrictions; and,
- 4) that applicable copyright laws will be followed.

Another consideration that may be especially important is that sharing of materials may be essential to develop coordinated curricula in different programs, leading to more effective teaching and learning.

TOOLS FOR PRESERVING

Tribal Codes and Ordinances

Tribes have the sovereign powers to govern and to regulate. Tribal powers over the regulation of non-Indians may be limited to those consenting to tribal control through contracting or licensing, or those powers shown to be necessary to regulate conduct affecting the tribe's political integrity, economic security or health and welfare. Although tribes may not have regulatory power outside of their lands and usual and accustomed places, their political power can be used very effectively in those cases where the tribe has carefully planned its strategy. One way to protect this sovereignty is to be very careful in how it is enforced.

Tribal legal acts concerning the preservation of language may be in a code, meaning a gathering of laws on a particular subject, such as culture. The law may also be contained in an ordinance, like one on language. A law affecting a particular program, especially if it does not require or forbid a particular action, but only encourages cooperation, may take the form of a resolution. Laws affecting a tribal program may be in an amendment to the program's policy or procedures.

In Relation to a Program Repository

If the language program is a part of a Native nation, its government may direct other programs to provide materials or cooperate with the repository. If a cultural program is separate from the language program, cooperation between the programs must be established, as the cultural program may also be involved in archiving language materials.

The language program should carefully examine the tribal documents that empower the program to make sure that the program has the power to set up a repository. If there is any doubt as to the program's power to do so, the program should request that the tribal government amend its powers to allow for the operation of a repository. Such an amendment may include: the purpose and expected use of the repository, the repository's relationship with other programs, its use of the tribal attorney's time, the power of the staff to negotiate with or request monies from federal agencies, and the power to contract with suppliers or consultants.

If the language program is not part of the tribal government, the program may request the government to direct specific programs, such as the cultural program, to cooperate with the language program, share or provide materials to it or provide other assistance. Such cooperation should, of course, be mutual. The language program should provide assistance or materials to the Native nation, as requested.

In Relation to Tribal Laws about Language

There are many ways in which tribal governments may encourage and foster the teaching of language.

The tribal government may by resolution endorse or approve of a language program's request for funding, whether it is or is not a tribal program. The Native nation itself may itself fund a language program, in which case care must be taken to assure that appropriate time is granted for its establishment. The governing body may not realize how much time it takes to decide on and develop teaching materials, find and train instructors and devise plans for continuing instruction.

The tribal government may wish to declare the language as the Native nation's official language. This presents very complex issues of governance:

- 1) If the language is not written or there is no approved orthography, then those steps would need to happen before the government's actions can be written in the language.
- 2) The need for adequate translators may mean that a declaration should be delayed until the translators are in place.
- 3) If the declaration is intended to apply to schools, intensive negotiations with the school administrators need to take place long before the implementation of the declaration.

There are many other matters that must be thought about before such an action is taken. Highway signs on reservation roads funded with federal funds, for example, may require extensive preparation.

In Relation to the Protection of Cultural Property

The Native nation may wish to offer protection to some oral cultural expressions occurring inside its jurisdiction. This is an extremely complex action requiring careful study of federal law, as given federal preemption of copyright law, the window for such action is extremely narrow.

The U.S. Constitution gives Congress the power over copyright. For many years, however, state governments regulated some matters of copyright, like oral expressions that were not written, as well as written materials that did not meet federal requirements. Since the revision of federal copyright laws in 1976, it is clear that all conflicting state laws are now illegal. What is not clear is the status of matters, like oral expressions, that are still not covered in the federal laws. Any tribal government contemplating such an action should require a careful legal study before taking action.

The Native nation may wish to grant permission to those proposing to develop materials using its culture. It is relatively easy to devise some type of license for these persons who come to Indian land to obtain information for the materials. Such a license could be enforced through use of civil penalties printed on the license and through use of tribal exclusion and removal powers.

An ordinance on this could provide for registration, payment of a fee to the tribe and that a copy of the final product is delivered to the tribe or a tribal program before publication and after publication. Under existing federal law, it is difficult to imagine how such a license could be enforced against those off the reservation except through filing suit on the license. Jurisdiction problems may arise in federal court in such an action; it may need to be filed in the state court where the researcher resides. Of course, the tribe may have a hearing procedure to revoke the license and prescribe appropriate penalties, but the penalties may be difficult to enforce against a researcher living off the tribal lands. The person could be barred from entering the tribal lands if the tribe has the power to exclude non-Indians.

The tribal government may also develop an endorsement procedure whereby materials are submitted to the Native nation for endorsement or approval. Such approval or the lack of it may be communicated to publishers, libraries, professional associations and other purchasers of materials.

The Native nation may protest the development and use of cultural materials as inappropriate and unethical. The Native nation may, for example, object to the use of a particular story included in a children's book by writing a complaint to the author, the publisher and the American Libraries Association. The Native nation may seek the advice of the American Indian Libraries Association. If, for example, the nation learns that an anthropologist or historian has published material that s/he was told should not be made public, the nation may lodge a written complaint with the anthropologist, his/her employer, the publisher and the appropriate professional associations. Professional associations often have codes of ethics enforceable against those who transgress them.

One of the main reasons why the passage of laws must be done with such great care is that people expect laws to be enforced. When laws are passed swiftly, there is often a lack of consideration for how the law is to be enforced. In the case of language laws, often so much preparation is necessary for the law to be implemented that there is a danger that the law will be ignored because it is impossible to work with. This undermines the tribal citizen's faith, not just in this law, but in other laws as well. This unhappy situation may well lead to a problem with the imposition of a rule of law on the tribal lands. Tribal citizens may conclude that instead of a rule of law, where laws are reasonable, passed in a reasonable manner and amended as necessary, they are instead under a rule of unreasonable people. This would not be good for the preservation of tribal government.

Under the Native American Graves Protection & Repatriation Act, "Cultural Patrimony" means: "...an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which therefore cannot be alienated, appropriated, or conveyed by an individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group." 25 U.S. C. 3001 (3) (D)

This same type of property right should also prove applicable to the patrimony embodied in songs, ceremonies and other objects and actions that belong to the Indian tribe or Native nation.

To protect its rights to this cultural property, the Native government should declare that it is the rightful owner of the songs, dances, ceremonies or other activities that it believes the Tribe or Nation has ownership of. The Native government should issue a formal declaration of cultural property, asserting rights over a single cultural property or many or all cultural properties. The declaration should assert that the claimed rights are prior and paramount rights extending from a time certain, if the date is known, or from time immemorial.

The Tribe or Nation also should aggressively pursue any recording of these acts done without its approval. The Tuolumne Band of Me-Wuk Indians recently won such a case against a person who recorded ceremonies with the approval of a member, but without Tribal approval.

Operational Procedure

Sample Forms

Consent to the Use of Language Information

I, _____ (Name), agree to provide information to _____ (Program) to be used to prepare materials to teach the _____ language. I understand the following and have had explained to me that:

- the information will be used to develop materials for the use of teaching the language;
- the materials will be preserved;
- the students of the language (may) (may not) include tribal members;
- the materials (may) (may not) be made available to people other than students, including those preparing the materials, those revising the materials, a funding agency, researchers, those preparing materials for other languages and others; and
- the copies of the materials may be deposited in a national repository, where their use may be restricted by the program that is gathering the information.

I also understand that I may direct that this information be made available to my descendants or heirs. I (desire) (do not desire) that this information be provided to them.

I desire that the following restriction on the use of the information be observed as closely as possible.

Signature
Address
Date

Signature of unrelated witness

Consent to Restrictions

I, _____, agree to the following restrictions in return for being allowed to examine the materials presented to me by _____. I desire access to these materials because _____. I understand and have had explained to me the restrictions:

1. I (will) (will not) be allowed to make a copy of the materials.
2. I must respect the integrity of the materials and not injure or deface them.
3. I (may) (may not) quote from the materials; if allowed to quote I will credit _____ as the source of the quotation.
4. Within the materials I am allowed to examine, I will NOT use materials that have been identified as not for publication.
5. I understand the copyright for these materials belongs to _____, with whom I must negotiate for any right to use the materials beyond scholarly purposes. I will observe all copyright laws.

Signature
Address
Date

Witness signature

.....

Explanation of Copyright

Copyright is tied in to American ideas about property, specifically in the sense of property as an economic value. It is easy to see how a person can own something s/he can carry, and many Native nations had laws about such ownership and its exchange for other property. It was not so easy for some tribes to understand ownership of land. Yet another type of ownership applies to owning the expression of ideas. This is copyright.

Many tribes have customary laws about expressions. These may include rules about stories or songs. The rules may restrict who can tell the story, when the story may be told and how the right to tell the story is passed to others, for example. The Indian rights and restrictions are a form of copyright, but not the type of copyright that is enforceable outside the reservation or lands of the tribe. Power over copyright was granted to the federal government in the U.S. Constitution, and the U. S. Congress has made that power almost exclusively a federal one.

The idea of American copyright is that the government grants to the person who created the expression specific rights in the expression. The expression is often called the work, to account for the many types of expression protected. These rights in the work itself are considered as a reward and economic incentive to create more works. These rights are called copyright because the main right is the one controlling the making of copies.

History

Copyright began with books. When books were copied by hand, the owner of the book decided who could make a copy. Later, when printing developed, the author sold the book to the printers, who then controlled the making of copies. English printers were granted a monopoly to print books by the king. The first printer to publish a book had the exclusive right to print that book.

The modern idea of copyright began in England in 1710. In the Statute of Anne, named after the reigning monarch, Parliament granted *authors* the right to control the copying of their works, instead of having to sell the work outright to a publisher. Once they registered each work and gave the government a required number of copies, they could control the work for up to 28 years, after which it became free for anyone to copy.

The U.S. Constitution in 1787 granted Congress the power “to promote the progress of science and useful arts...by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries.”(Article I, section 8, clause 8). Early on, as Congress passed laws protecting published works, unpublished works were protected by state laws. The 1909 federal law is the one that formed most people’s ideas about copyright; it was very strict about what steps had to be taken for the work to be protected. It had to be published with notice of copyright, the application had to be properly filled out and copies deposited before the registration was issued.

In other countries, copyright developed differently, with more rights for creators and fewer requirements for copyright. Partly due to the influence of these ideas, Congress completely remade the law on copyright in 1976 (17 U.S.C. 106 and 106 A). This act and its amendments comprise the controlling law today, although for works published before 1978, the older law may still be important. The key provision of the 1976 law is that fixation, or putting the work into a material form, and not publication triggers the existence of copyright. Also, copyright was no longer dependent on registration. The term of copyright was extended. Copyright ownership could be divided among different parties. The act also made the stated category of works an example, rather than a limit.

Works protected now include, but are not limited to: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion picture and other audiovisual works; sound recordings; and architectural works.

Works not protected include those not fixed, titles, listings of ingredients, ideas or concepts and information that is common property and contains no original authorship (like a ruler or standard calendar). Works produced by the federal government were once uniformly not covered, but now many works produced with federal monies are allowed to be copyrighted by the creators, depending on the terms of the federal contract.

The website of the U.S. Copyright Office, accessible at <http://www.copyright.gov/>, under the publications tab has a series of plain language explanations of many aspects of copyright law.

To be protected, the work must be original, which is not at all comparable to the novelty requirement in patent law, a substantially different type of protection. The work must be original to the author; it can even have the same plot or ideas of another work, as long as it is *expressed* differently.

The work must be fixed in a tangible medium or copy. Tangible means capable of being perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. The work must exist for a time, although even cake icing designs have been copyrighted. Any writing or recording of any kind meets this requirement.

Although registration is no longer required, it is often wise to do so as it provides anyone seeking to make illegal use of the work with notice that the work is protected. Registration is required for works published in the U.S. before a lawsuit can be filed against someone infringing the work. Infringement means using the work without the permission of the copyright owner. Registration also means that specific damages and attorney fees will be available when someone infringes the work.

A “compilation” is a work that is formed by assembling material that already exists. A collection of Indian stories written by others would be a compilation. The editor of the compilation would have a copyright in the compilation. The authors of the individual stories have their own copyright in each story and would have to consent to having their story in the compilation. This consent is a license to include the work in the compilation.

A “derivative work” is a work that transforms an existing work, for example, turning a story into a play, or translating the existing work into another language. Each work receives its own copyright to the new material that was created, although the creator of the derived one must have the permission of the copyright owner of the original work.

There are two types of “works for hire.” The first is when an employee, as part of his/her job, prepares the work. The second is when an independent contractor is commissioned to produce the work, in that case there should be a written agreement specifying that the work is one for hire and that the copyright belongs to the one who commissioned it.

If there is no written agreement, or if the agreement is not clear, a court will look to the facts surrounding the case, including the amount of control exercised over the contractor as the work was prepared. Only certain categories of work may qualify as works for hire, they can be part of a collective work or compilation, an instructional text, or a supplemental work (such as the foreword or index of a book).

When more than one person creates the work, “joint ownership” is created if that was what each party intended. Each creator is a co-owner and must account to the other owners when dealing with an outside party.

A “collective work” is formed when the work is made up of works individually copyrighted, like an issue of a magazine or an anthology of short stories. The preparer of the collective work must have the permission of the creators of each work, and the preparer only has rights over the collective work, not to use the individual works for other purposes.

Ownership and Transfer of Ownership

The owner of a copyright can only transfer the copyright to another by a written agreement, often called an assignment. The agreement may be recorded with the Copyright Office, but if the agreement is what is called a security agreement, meaning that the copyright is the security for the payment of a debt, it must be recorded.

It is important to realize that the copyright ownership is separate from the work itself. The owner of a work may sell the work itself without selling the copyright, which stays behind with the creator unless there is an assignment of the copyright.

The owner may also grant a license, a right to use the work for a specific purpose. The license may be an exclusive one, meaning only the licensee may use the work for that purpose, or non-exclusive, allowing the owner to permit others to do the same thing. Licenses may be granted orally or by a course of conduct that implies that the person has the permission to use the work.

The Exclusive Rights of Copyright Owners

The main right of a copyright owner is the right to copy (reproduce) the work; that is, duplicating it in any form. Making a drawing of a photograph, for example, would infringe the reproduction right of the copyright owner. For the right to be violated a copy has to be made, so that the public reading of copyrighted chapter from a textbook would not be a violation while including the chapter in another work without permission would be.

The right to control derivative works gives the copyright owner the right to control the creation of another work based on the first. This would include creating a video lesson based on a chapter of a language textbook.

The right to control distribution of the copies relates to publication of the work. Publication means the distribution of copies to the public by sale or other transfer of ownership, or by renting, leasing or lending. The “first sales doctrine” holds that once a particular copy has been sold under the copyright owner’s authority, the owner’s right of distribution ends and the buyer may loan, rent or sell it.

Other rights apply only to certain kinds of works. The right to control public performance and display applies to literary, musical, dramatic choreographic, pantomime, motion pictures and audiovisual works. The performance right allows the owner to control any performance of the work whether or not for profit. The right of public display includes graphic and sculptural works and allows the owner to control the “first sale” doctrine, the public display of the work.

“Moral rights” are a common feature of owner’s rights in other countries; they protect the creator’s reputation and control over alteration of the work. In the United States some of these rights apply to certain visual works; many other visual works like maps and books are excluded. These rights give the artist the right to claim or disclaim authorship and to protect the integrity of the work against destruction, mutilation or modification. These rights only apply to the creator and only exist during the creator’s lifetime.

Fair Use Doctrine

Evolving initially through the court decisions later confirmed by statute, “fair use” is a major limitation on the copyright owner’s rights of control. The doctrine allows copying and use of the work for purposes such as criticism, news reporting, teaching and research. Four factors are considered in deciding whether the use is a “fair” one

1. The purpose and character of the use, including whether the use is commercial in nature or for nonprofit commercial purposes.

2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used in relation to the work as a whole.
4. The effect of the use on the potential market for or value of the work.

Library exemptions also exist. Under 17 USC 108, all libraries and archives are granted rights in the work to study, research, loan to other institutions, archive and preserve the work.

Duration

The term of copyright for a particular work depends on several factors, including whether or not it has been published and, if it has, the date of first publication. As a general rule, for works created after Jan. 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. For works first published prior to 1978, the term will vary depending on several factors. To determine the length of copyright protection for a particular work, consult [chapter 3](#) of the Copyright Act (title 17 of the *United States Code*). More information on the term of copyright can be found in [Circular 15a](#), *Duration of Copyright*, and [Circular 1](#), *Copyright Basics*.

Renewal

Works created on or after Jan. 1, 1978, are not subject to renewal registration. As to works published or registered prior to Jan. 1, 1978, renewal registration is optional after 28 years but does provide certain legal advantages. For information on how to file a renewal application, as well as the legal benefit for doing so, see [Circular 15](#), *Renewal of Copyright*, and [Circular 15a](#), *Duration of Copyright*, available from the copyright.gov website.

Publishing

Before the 1976 Act, authors usually sold (assigned) the copyright in their works to the publisher. Since then, authors usually keep the copyright and only grant the publisher a license to publish the work. The license is part of a written contract which specifies the amount of advances, royalties and the terms and conditions of the rights granted to the publisher.

Other Intellectual Property

Other forms of intellectual property are governed by their own statutes.

Patent law's role is to grant exclusive right in new and useful inventions and improvements to inventions. A patent grants the exclusive right to "make, use, or sell" a "new and useful process, machine, manufacture or composition of matter." The requirement that the work be new here means novel or not existing before. It also must not be obvious. This contrasts with copyright's requirement of originality which requires only a minimal amount of creativity, and allows the copyrighting of similar works. No one else can patent any similar invention. A patent lasts twenty years.

A trademark is tied to commercial purposes. A trademark can be a name phrase or mark. When a trademark is registered, no one else may use it to sell similar products using the word or mark. It is possible that the trademark can be used to sell something else, as long as it is used in such a way that the public is not confused. Trademark owners must be careful that the trademark does not come to be a generic term; this is how the trademarks to "aspirin" and "thermos" were lost.

A use of copyrighted work, except for the fair use exceptions is an infringement.

Repository Copyright Policies

I. Intent, Objectives and Scope

A. Intent - The intent of this policy is to respect and apply the copyright laws applicable to the materials held in this repository, while also respecting the rights of the Native Peoples to control the use of their cultural property.

B. Objective and Scope - The objective of this policy is to provide guidance on copyright matters to those working in and using the repository, as well as direction in Indian control of the use of materials. The scope is intended to include all materials entering the repository.

II. Compliance with Native Directives - Restrictions

A. What May be Restricted - Restrictions may be of any kind whatsoever. Examination of the materials may be prohibited or restricted to tribal citizens or available to selected persons, for example, only to those with permission from the Native nation or program. Copying the materials may be prohibited or allowed only for specific purposes.

B. Statutory Restrictions - Statutory restrictions are those imposed by any tribe wishing to take advantage of the 1992 Native American Languages Act Amendment's provision 9 (codified at 42 USC 2991b-3(f) (2) (D) (ii)) not to permit redistribution of copies provided or to restrict in any manner the use or redistribution of the materials produced by the tribe.

1. Notice to Repository - A Native nation or intertribal coalition using this provision should do so in writing, preferably signed by the responsible official(s). If the restriction is orally transmitted to the director or a staff member, such restriction should be immediately written and signed by the person to whom it was transmitted. If the restrictions are unclear, the director may seek clarification from the entity issuing notice.

2. Item Record - All the materials transmitted to the repository should be examined for such restrictions and the restrictions must be noted on the item's record, including a statement that the restriction is a statutory one.

3. Effect of Restriction - A statutory restriction must be strictly observed. Any statement from the Native nation or intertribal coalition allowing an exception for a particular researcher should be verified.

C. Non-Statutory Restrictions of Funded Materials - Non-statutory funded materials are materials produced by entities other than tribes with funding provided under the Native American Languages Act Amendment of 1992. The producer of these materials may request restrictions on the use of the material. It must be made clear to the requester that, unless the requester is the copyright holder, compliance by researchers will be voluntary. The requester should be urged to provide the reasoning behind the request.

1. Discretionary Power of the Director of the Repository - The director must carefully consider the request for non-statutory restrictions and may negotiate with the requester before deciding whether to grant the request. The director will decide whether to honor such a request for restrictions, and may consult with other tribes or entities in reaching a decision.

2. Item Record - If restrictions are granted, they must be noted on the item's record.

3. Voluntary Compliance - If a researcher chooses not to comply with a non-statutory restriction the researcher shall be told of the reasons for the restrictions. The researcher shall then be notified that the requester of the restriction will be notified immediately. The researcher will then be allowed to examine the materials.

D. Notice to Tribes and Others of Materials Received - When materials are received, all relevant tribal governments (other than the one that sent the material, if applicable) should be notified of the receipt of material on their language. At the discretion of the director, such a notice may also be sent to an organization involved in teaching or preserving that language or to a tribal government agency or organization of Native Hawaiians or Native American Pacific Islanders.

1. Content of Notice - The notice should include a summary of the restrictions, if any, placed with the material and information on is the identity of the copyright holder. The notice should provide the Native governments or organizations with the opportunity to request non-statutory restrictions on the use of the materials, explaining that such restrictions will require voluntary compliance by the researchers and that the requester will be notified immediately if the researcher insists on not complying with the restrictions.

2. Treatment of Requests - Any request received as a result of the notice must be treated the same as requests for non-statutory restrictions.

E. Requests for Restrictions from Others - The director may also consider restrictions requested by other persons, treating the request the same as the same as requests for non-statutory restrictions.

F. Examination of Materials

1. Examination of Restricted Materials - Any researcher permitted to examine restricted materials must sign a written statement agreeing to comply with the restrictions before being granted access to the materials.

2. Observation of Restrictions - Care must be taken by all staff to ensure that any restrictions are observed. The restrictions shall be taken into account in the design and operation of the Repository.

3. Copying of Materials - Care should also be taken to ensure that researchers do not have access to reproduction devices, unless permitted to have them. If reproduction is permitted, the reproduction should be done by the Repository.

III. Compliance with Applicable Federal Laws

A. Intellectual Property Laws - The Repository must comply with all applicable federal laws regarding copyright or other intellectual property laws.

Some language or cultural programs may believe that any work about the tribe's culture or language can be used by them without regard to copyright laws. Although sympathy may be expressed for that position, the Repository must make it clear that the Repository itself will comply with all applicable federal laws. Efforts should be made to provide appropriate educational materials to any patron of the Repository objecting to the application of such laws to his/her request.

B. Notice to Researchers - Every researcher shall be given a copy of the following statement:

Copyright in the materials in this Repository may not be held by the federal government and, therefore, the Repository may not be able to consent to its reproduction or use. It is the researcher's obligation to determine and satisfy copyright or other use restrictions when publishing or otherwise distributing materials found in the Repository's collection. Transmission or reproduction of protected items beyond that allowed by fair use requires the written permission of the copyright owners. Researchers must make their own assessments of rights in light of their intended use. More information about U.S. copyright law (Title 17 U.S. Code) is provided by the Copyright Office. [NOTE: This notice is substantially copied from that of the Library of Congress]

C. Information on Copyright Holder - Any researcher desiring information on the copyright holder of material in the Repository shall be provided the information.

D. Other Federal Laws

The Repository will comply with all other applicable federal laws.

IV. Ownership of Copyright

A. Determination of Copyright

1. Ownership of Copyright - In so far as is possible, every work in the Repository will have an entry in its record indicating who owns the copyright in the material. If necessary, research will be done to determine the copyright holder. All material entering the Repository (because it was produced under the Native American Languages Act of 1992) should have the contract under which it was produced included in its record.

B. Notification - If the copyright holder may not be aware that the material is in the Repository, the holder should be notified and requested to provide any information about permissions as well as information that will assist in placing researchers into contact with owners.

C. Reproduction - No reproduction will be allowed for other than fair use of material until the material's copyright is determined.

V. Licensing Agreements

A. Compliance - The Repository should assist copyright holders with information about Copyright Clearinghouse or other arrangements for researchers seeking to use materials for other than fair use.

Memorandum on Available Resources

Problems in the Determination of Copyright

Federal Copyright

Any work produced under a federal grant, should include a copy of the contract under which the work was made. Generally, if the creator is allowed to copyright the materials, there will be a contract provision granting the government unrestricted permission to “use, modify, reproduce, release, perform or disclose” for government purposes. CENDI, an interagency working group of scientific and technical information managers, has a series of explanations of government copyright at in their “Frequently Asked Questions” publication. (<http://www.dtic.mil/cendi/publications/04-8copyright.html>)

Unknown Copyright Ownership

In the case of works with no immediately discernable copyright owner, the publisher should be contacted as well as the author. To determine the publisher, if it is not readily discernible, Books In Print should be consulted. In the case of articles in journals, Ulrich’s International Periodical Directory serves the same purpose.

Circular 22 of the U.S. Copyright Office, accessible at <http://copyright.gov/circs/circ22.pdf> , provides some guidance on how to examine the work itself, as well as copyright records. A list of publishers is at: <http://www.lights.com/publisher/> and at: http://www.literarymarketplace.com/lmp/us/index_us.asp

There is also a print publication, American Bookseller’s Association’s Publishers Directory.

To search by author see: <http://www.authorsregistry.org/autcondir.html> Email inquiries only.

Older Works

Because copyright ownership is dependent upon date of publication, as well as upon the date of changes in the statutes, it is easier to see the information in a tabular format.

For older works, a useful chart on copyright duration has been created by Cornell University: http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

Additional charts and material are listed in footnote 1 at the end of the chart.

Fair use guidance: <http://fairuse.stanford.edu/>

Safeguarding copyright of audio visual materials <http://www.loc.gov/rr/mopic/avprot/copy.html>

Classroom copying: <http://www.copyright.gov/circs/circ21.pdf>

Restrictions on the use of materials

Government use of copyrighted works: <http://www.loc.gov/flicc/gc/fairuse.html>

Tribal Copyright

Although federal statutes preempt the possibilities of state or Tribal copyright law for topics covered by the statutes, there may be room for tribal laws on matters outside of the scope of the federal statutes. This matter deserves further study, but it may be available for the protection of oral expressions or works that are not works of authorship or lack originality. The topic is briefly discussed in Nimmer on Copyright § 1.01[B][2].