Engaging Native American Publics
Linguistic Anthropology in a Collaborative Key

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The semiotics of immaterial cultural property and the production of new Indigenous publics

Jane Anderson, Hannah McElgunn, and Justin Richland

Museums, archives and universities are key sites from which ideas about Indigenous peoples and cultures emanate. Given the size, wealth and central location of these institutions in many of the world’s major metropolitan centers, and the collections of Indigenous cultural materials they hold, they are very often the only place where non-native publics ever encounter any aspect of the lives and ways of Indigenous peoples. At the same time, it is often the case that these collections, and thus the ideas they generate, are premised largely on Euro-American traditions of scholarly inquiry that inform the institutions that house them. The Indigenous logics that give the collected materials their significance for the Indigenous communities to whom they belong are treated as part of the information to be exhibited—objects of inquiry and exhibition themselves—and much more seldom taken into consideration by their host institutions to inform how Indigenous cultural materials can and should be exhibited in the first place. These collections and their exhibition remain largely unchanged since the late nineteenth and early twentieth centuries, when the prevailing theories of social evolution led to the conclusion that these objects represented Indigenous cultures on the brink of the unstoppable march of Euro-American style industrialization and market capitalism across the globe (Deloria 1969, 2004; Cole 1985; Smith 1999; Thomas 1999; Kreps 2012; Bennett 2004).

Yet, starting in the last decade of the twentieth century, efforts on multiple fronts—Indigenous, anthropological, museological and legal—suggest the beginnings of some rethinking of the relationships expressed in ethnological collections. A watershed moment came in 1990 with the enactment in the United States of the Native American Graves Protection and Repatriation Act (NAGPRA) (Fine-Dare 2002). This legislation introduced a process for museums and other federally funded institutions and agencies to return “human remains,” “cemetery items,” “sacred objects” and “objects of cultural patrimony” to lineal descendants and “culturally affiliated” tribes. It legitimized a sentiment among some Native Americans concerned about their ancestors and belongings that had, until then, remained largely unrecognized. NAGPRA intervened to dismantle structural exclusions within these largely non-Native institutions, and, at the same time, made visible a diverse and politically invigorated Indigenous public. Not only are Indigenous peoples still “here,” many argued, and not only are they not wearing feathers and buckskins, they are also not all of the same mind about the representations of their histories, cultures and peoples as depicted by Euro-American scholarly logics. As these peoples and cultures once presumed to be the “subjects” of Euro-American scholarly inquiry and collection became some of its key interlocutors, a fundamental shift took place in just who it was that constituted the “public” addressed by these collections. The effect has been something of a shockwave, rattling the pillars of scientific objectivity that undergirds the organizational logics of these institutions, and requiring a rethinking of the very nature of what engaging with and deriving meaning from its collections of Indigenous cultural material can and should mean.

As such, while NAGPRA remains an important landmark for Indigenous rights both in legal as well as political terms, it is only the near edge of what is a much deeper horizon of significance entailed in the ethnographic collection and representation of Indigenous cultural materials. It is thus necessary to consider not only this deeper significance, but what also sits beyond NAGPRA more generally—what it does not and indeed, cannot, address.

Among the vast amounts of Native American cultural material collected by non-Indigenous scholars and institutions over the years, a substantial portion is not “funerary,” in nature, nor even “material,” in the typical sense of the term. Much of the information about Indigenous peoples housed in non-native institutions is what has been recorded in film, song and text-artifacts of scholars, amateur collectors, Indian agents, missionaries and other governmental officials. These detail the musical, narrative and religious practices and values that constitute vital cultural heritage central to ongoing transmissions of cultural knowledge and practice (Anderson 2005). Immaterial “materials” like these, in the last ten years or so, have become an increasingly central focus of claims made by Indigenous communities seeking to intervene on their use and handling by non-native institutions. And while these claims are undoubtedly influenced by the passage of NAGPRA, none of these (im)materials are actually covered by the law. They are either protected by copyright law or copyright has expired and these materials have entered the public domain where no special permissions or rights for re-use are necessary.

It is on this “intangible” cultural material, and how it is being claimed, policed and protected outside of NAGPRA that this chapter focuses. In particular, we focus on Indigenous languages. This is in part because of the importance these languages, and their documentation, hold for Indigenous peoples, including those endeavoring to reverse the effects of language decline or loss. The claims Indigenous peoples can make as publics who use language materials speak back powerfully to the practices that have led to language fragility in the first place. They not only stand against a particular politics of erasure and appropriation, they also show precisely why important debates about access to, control of and ownership of language and other kinds of immaterial culture are occurring in so many Native contexts.

For many Native American nations, including Pueblo peoples of the American Southwest, languages are part of a larger complex of sacred knowledge that undergird an esoteric ceremonial system whose efficacy is premised on restrictions placed on who can access such information and why (cf. Debenport 2015; Richland
labeled settler-colonial contexts have expressed around intellectual property and the protection of their intangible digital cultural heritage in museums, archives and libraries. Unlike other collections of cultural heritage, Indigenous material is caught up in various legal regimes of protection that are difficult to understand and untangle, even for the most seasoned legal counsel. Moreover, in their increasing movement into digital formats, the new rights that are generated only compound the problems of responding to Native/First Nations concerns about ownership and circulation of materials. These legal entanglements impede access and use. They make already difficult negotiations with institutions and other right holders even harder. There are currently no services available for helping communities navigate the terrain of copyright ownership and no tools that actually work to correct or augment the public historical record according to cultural sensitivities and responsibilities in practice. Local Contexts was developed as an attempt to practically address these concerns about Euro-American property laws, their colonial conditions of exclusion, and the difficulties in trying to rehabilitate them for use by those who were deliberately and structurally excluded.

The project started as a licence and rights management tool for those members and advocates of Australian Aboriginal cultural heritage who were actively using a new digital content management system called Mukurtu (www.mukurtu.org) which had been developed to aid in the management of intangible cultural heritage that had been returned and repatriated in digital form (Christen 2015). Local Contexts, like Mukurtu itself, is thus an applied anthropological practice in which a series of decolonial theoretical problematics are being mobilized through a specific set of tools designed for their deployment by advocates themselves. What Local Contexts looks like today is the product of its co-development during the last three years in partnership with members of Native and First Nations across North America, including the Musqueam Indian Band and the Súéño First Nation in British Columbia, the Karuk Tribe in California and the Penobscot Nation and the Passamaquoddy Tribe of Indians in Maine. Each has beta-tested, modified, and refined new strands of this platform and contributed to the building out of its emerging digital technology for tribal needs. But Local Contexts is also the product of collaboration with non-native institutions housing intangible cultural materials, including Library of Congress and the Chicago Field Museums, both of which hold some of the world’s largest and most valuable collections of Native American and First Nations cultural heritage materials.

In light of its ongoing development, the aims of Local Contexts have grown beyond its original deployment as an educational and digital image circulation and management tool. Today it stands for the very possibility that partnerships like these can stage a collaborative rethinking of the ways in which Indigenous materials are understood and interpreted within their current institutional contexts, as well as in models for making such material available in their intangible forms.

One of the key devices through which Local Contexts addresses the concerns of Indigenous peoples is through the Traditional Knowledge (TK) Licenses and Labels which combines legal (TK Licenses) and educational (TK Labels)
interventions. This initiative, which just received a multi-year grant from the National Endowment for the Humanities (Division of Preservation and Access), is part of the social movement made possible through repatriation collaborations initiated by NAGPRA (Montenegro 2015). It recognizes the benefits that arise for both Indigenous and non-Indigenous peoples when Indigenous peoples own, represent and classify their cultural representations and cultural knowledge.

The TK Licenses, motivated largely by Creative Commons licenses, are an extension of existing copyright/contract law and are meant to be legally defensible across multiple jurisdictions. TK Licenses allow communities (variously defined) to extend the terms of use of their copyrighted works to suit their own cultural parameters and cultural protocols. But to do this they must be already recognized as the copyright holders of the work. The TK Licenses address gaps in both standard copyright protections and in other licensing options offered by Creative Commons by flexibly incorporating culturally specific terms for use and re-use. By focusing on the kinds of use that communities are interested in, while including a recognition for differing cultural expectations and obligations around use and control, TK Licenses offer a specific tool for communities using copyright, but who find it lacking in certain ways.

As the project developed it became clear that licensing was a very limited option that very few communities could use because they are largely not the legal owners or rights holders of their recorded cultural heritage. Researchers and the people who did the documenting hold this position of “author” (Anderson 2013). Thus this initiative uses both licensing and labeling strategies when addressing Indigenous peoples’ concerns to control the circulation of their immaterial culture. While licensing can work when Indigenous peoples are the holders of copyright over the materials in question, many (ethnographic) collections that are significant and vital to Indigenous communities are in the public domain and either have no copyright protection or are owned by third parties. This is the case for an abundance of “intangible” indigenous cultural heritage housed in museums, archives and libraries, from linguistic documentation, to fieldnotes, to sound recordings.

In response to this problem, the TK Labels were created as interventions that endeavor to educate publics and institutions about the concerns that Indigenous peoples have over the dissemination of such materials now beyond their legal reach. This is especially for material already in the public domain. Each Label (there are currently 15) has two parts—a fixed visual icon and a textual description. What is unique about the TK Labels, and perhaps why there is such enthusiasm for them within the 17 tribal contexts testing them thus far, is that they have been developed in a way that allows each community to adapt and customize the textual description to suit their specific needs. While communities can ask institutions individually to put up specific provisions for use, this is hazardous and institutionally specific. Moreover, this information rarey adds to the metadata of the item either in the institutional catalogue or online. The way in which the TK Labels have been designed, including their technological development, places Indigenous perspectives directly into the metadata of an item.

The Labels bring a contemporary Indigenous presence into the archive, which is carried forward as the digital heritage item circulates. This is an intervention that sidesteps copyright law. As an educational intervention it changes how material can be understood by providing previously missing information about cultural rules and responsibilities about future use and circulation.

While the kinds of concerns that communities have are manifold, we focus here on two case studies that illustrate the efforts of the Hopi Cultural Preservation Office (HCPO) to influence the access, circulation and management of Hopi “intangible” cultural material. These examples illustrate the norms about the distribution and disclosure of knowledge that animate Hopi ceremonial and everyday life, and the ways in which intellectual property rights are an appealing but inadequate proxy for them. In attending to the way Hopi norms rub up against the kinds of protection offered by traditional intellectual property rights, these case studies illustrate the kinds of paradoxes that Indigenous communities face in this post-NAGPRA era. After presenting these case studies, and in light of the issues they raise, we move on to consider the application of the TK Labels in more detail and the kinds of use they can be put to as a productive intervention, but not a cure-all for Indigenous community engagement with intellectual property.

**Intellectual property and Indigenous knowledge: Ekkehart Malotki’s Hopi salt trail manuscript and the Hopi Dictionary/Hopikwa Lavanituweni**

The year that NAGPRA was passed, 1990, was a watershed year for Hopi cultural preservation activity. But this was only one expression of a much larger trend toward rethinking the rights that Indigenous peoples retain in relation to their cultural property, both material and immaterial. Starting in the late 1960s, Native Americans increasingly began to press back against the ongoing, colonial misappropriation and misrepresentation of their communities and cultures by non-Natives, including anthropologists and linguists, whose research was built on disseminating information about the lives and cultures of Native peoples who often saw little of the benefit gained from such work. This colonial legacy, which informed the passage of NAGPRA was also part of the same concerns that inspired, a few years earlier, the establishment of a Hopi Cultural Preservation Office (HCPO) and its development of one of the first and most comprehensive attempts in the United States to establish a tribal regulatory framework for responsible research on tribal territories.

At first the HCPO had largely focused its energies on managing archaeological resources on the reservation, protecting against the looting of sites by illegal pot-hunting which had ravaged a number of well-known sites in the area. By the end of the 1980s, however, Hopi tribal leadership became concerned about other, less tangible, but no less real, threats to their preservation of Hopi culture, ones that they felt had the same impact of misappropriation and misuse of Hopi material. Then Hopi Tribal Chairman Vernon Masayesva appointed Leigh Jenkins
Hopis leaders felt that sharing information about Hopi salt trails to the world, as Malotki’s book was poised to do, was a double threat to Hopi cultural patrimony. Not only would such disclosures reveal information about the actual whereabouts of sacred sites, exposing them to substantial degradation, but even worse, their spiritual efficacy of these sites would be compromised as well. Much as Kroskrity (1993) has described with the language prohibitions of village of Tewa, the Hopi similarly feared that such acts of disclosure in whatever form, threaten to upset the delicate balance of ceremonial efficacies and obligations that animate Hopi social and ceremonial life.

In mounting their protest to Malotki’s salt trail manuscript, the Hopi Tribe had fired a shot across the bow of any and all academic knowledge dissemination that attempts to make their own use of Hopi intangible property without their knowledge, consent and participation. In a belated response from Northern Arizona University, when it still seemed that the tribe would not be able to block Malotki’s manuscript going to print, chairman Masayesva drove the point home:

Although the [Salt Trail] research wears the cloak of scholarly enterprise, its publication denotes to us a lack of sensitivity to our religious values and the way we organize and conceptualize our sacred traditions... Together we need to examine the issue of research and the manner in which scholars will conduct research so that Indian views will be respected. I propose an inclusive agenda... However, let me caution you again that any university-sponsored project, regardless of how noble its aim might be, will surely fail if consultation with Indian tribes is not part of the planning process from the project’s inception.


Eventually The University of Nebraska Press retracted their agreement to publish the Hopi Salt Trail manuscript, despite having seen it all the way to the final stages of production. But the victory proved to be limited, and the underlying problem of how to manage the access to and circulation of knowledge in accordance with Hopi ceremonial norms emerged again. This time, intellectual property protections came to the fore as a potential strategy for both translating these norms to outsiders, and attempting to uphold them. The history of the 1997 publication of the Hopi Dictionary/Hopiikwa Lavaytuvowu illustrates both the potential and drawbacks of intellectual property protection for Indigenous languages, and provides a backdrop for our discussion of these issues in relation to the Local Contexts initiative.

A comprehensive Hopi dictionary was originally the idea of Emory Sekaquaptewa, a member of the Hopi tribe, from the Third Mesa village of Hotevilla, Chief Justice of the Hopi Appellate Court, and Professor of Anthropology at the University of Arizona. For decades, Professor Sekaquaptewa had been developing Hopi word lists with the idea of creating a grammar and dictionary of its Third Mesa dialect, one that could be taught to Hopi children in the reservation primary and secondary schools. After joining up with two non-Hopis—Dr. Kenneth Hill and
and Dr. Mary E. Black (the former a linguist, the latter a library scientist)—the effort became more formal. While Hill and Black set to work on analyzing the existing literature on Hopi language resources, and reworking their disparate orthographies and grammars into a single unified system, Sekaquaptewa formed a team of Hopi elders, mostly men from Third Mesa, who would serve as Hopi language consultants. They helped in fine-tuning the meanings attributed to different Hopi terms, but also assisted the project in steering clear from revealing any sensitive ceremonial information. The effort, ongoing for many years, was not without its challenges, including issues of disclosure that parallel those raised by the Malotki manuscript controversy.

Hill describes the setbacks and discussions that ensued as the dictionary was going to press (Hill 2002). Leading up to publication, the team worked to background individual authorship, which they perceived to be "in line with Hopi cultural prescriptions" against endeavoring for praise (303); additionally, any content that could be seen to "compromise the Hopis' sense of religious propriety" was vetoed by the Hopi usage panel (303). But despite these precautions, issues remained. Among these issues was the ascription of copyright in the dictionary as a whole, and a concern that broad publication of the dictionary would limit any capacity to restrict non-Hopis from accessing it.

The question of copyright emerged when the matter of the dictionary’s publication was taken up more seriously by the University of Arizona Press, as the dictionary’s drafting came close to finalization. At that time the question arose whether the Hopi Tribe itself, who the authors had agreed would be the recipient of all proceeds they were to receive from sales of the dictionary, should also be a holder of the copyright.

But the HCP’s request that copyright be vested with the tribe was dismissed by the publisher. As the Director of the University of Arizona Press, Stephen Cox, explained, copyright merely protects "the dictionary as a particular written expression," rather than signaling ownership of the language (Hill 2002: 309). This is a standard copyright argument within Anglo-American law, in which the dictionary is only one written expression. But, the Hopi argued, this ignores the extent to which the dictionary, like the Salt Trail manuscript before it, also operates within a paradigm of Hopi rights and responsibilities towards the transmission of the Hopi language, as well as the history and politics of misappropriation coloring the concerns of the HCP. One can appreciate why the HCP thus balked at the University of Arizona’s initial refusal to recognize the Hopi tribe’s interest in copyright to the dictionary. It is true that copyright law and the arguments that copyright is only concerned with "particular written expression[s]" rather than the flow of intangible cultural property rights through those expressions. It is also true that the very act of creating ownership in specific expressions establishes new circulatory routes for ownership of the written language form, one that makes it possible for non-Hopi to take up and use the language in ways that are unimaginable—ethically and ontologically—from the perspective of the Hopi tribe. The possibilities that such flows could and would unfold from this "particular written expression" constituted by the Hopi dictionary was something that seemed foreclosed by the Press’s initial, blanket rejection of the HCP’s copyright claims. Just as chairman Masayesva had anticipated in his speech at NAU, even the most noble of research projects, which the dictionary surely was, would fail, on many levels, if it didn’t come from genuine consultation with the Hopi Tribe at its earliest stages.

Eventually copyright was arranged to be transferred back to the Hopi Tribe after the dictionary had been in publication for ten years. So, in this instance, copyright was not merely a question of arcane legal technicalities. For both the Press and the Hopi it represented the value inherent in maintaining control over rights not just in the content of cultural knowledge but in its very disclosure and thus its (future) circulation. And this was true whether such value got rendered in the sacral terms of Hopi ceremonial responsibility and obligation, or in the seemingly secular terms of publication market value. For if copyright only protected interests in one specific instance of linguistic expression—a dictionary of Hopi language—why would it have been so important for the Hopi to have it, and for the Press to resist giving it up, and then to ultimately agree to its transfer to the tribe after ten years?

It is also true that copyright alone would not prevent the problems that the HCP were most concerned about, the circulation of navotit to those unauthorized to receive it. As scholars of intellectual property have duly noted (cf. Brown 2003; Lange 1993) copyright was always intended to be a limited right, one that would expire after a certain amount of time. Once the copyright expired, the material covered would enter into what is now called the "public domain" (or "the commons")—that arena of creative material that is imagined as available to all for use, re-use and repurposing by future generations. Copyright law has always been oriented towards increasing the material in the public domain rather than constraining it. In the market-based logics of today’s global capitalist system, both the creation and the expiration of copyright—the taking something out of the public domain, protecting it for a time so that a commodity can be made of it, and then its ultimate return to the commons—are all understood to motivate (profitable) creativity and innovation. So, from this perspective, intellectual property protections and the public domain are co-constitutive.

The appropriation of this particular tool of intellectual property by Hopi actors, however, is oriented towards diametrically different ends: "the commons" does not exist within Hopi epistemology, which, as described earlier, depends on an intricate system of checks and balances. Gaining copyright, of course, did not simply resolve the issues the dictionary presented, and the problems of disclosure and circulation emerged again once the dictionary appeared in print. Though efforts were taken to give priority to exclusive Hopi access to the dictionary—the dictionary was made available to Hopis at a reduced price, and a limited run was published—this was not entirely adequate to address Hopi concerns. As Hill (2002) himself explained, the problem was not just one that divides access to the language between Hopi and non-Hopi, but also among the Hopi as well. Just as with navoti and wimnavoti, Hill explained, Hopis perceive their language to
“com[e] out of the unique history of the Hopi clans and is part of their privileged clan inheritance” (Hill 2002: 307). Such a view poses a challenge to a Hopi dictionary that would attempt to standardize its syntax, grammar and semantics, even one that is as sensitive to such issues as the dictionary was. Indeed, one has to ask how the preservation, dissemination and even standardization projects of the sort that would seem to almost always underwrite the compiling of any dictionary (but see Debenport 2015 and this book) could ever escape running afoul of the radically pluralized conceptualization that Hopi understand their language to be. As a kind of clan property, it is the privilege and responsibility of clan and lineage relations to pass down the language at home. The idea that the language might be learned from a dictionary or other school-based pedagogical tools threatened to upset this social order.

Indeed, one can ask in any of those challenges around Hopi intangible property claims, how can this kind of hereditary relationship to the language and its uses, as properties always already imbued with rights and responsibility integral to Hopi existence itself, be recognized in any project that would generalize a representation of Hopi language that ignores the unique claims of the different Hopi clans? Is it possible to provide any support within Euro-American legal frameworks for claims like these? Or are those Hopi who hope to have their intangible cultural property rights protected as rights inherent in each of the 15 or more clans that make up each of the 12 Hopi villages, doomed to be frustrated in their attempts?

One thought rests in the fact that, in addition to seeking to hold copyrights, the HCPO has made the broader claim that the Hopi language constitutes their “intellectual property.” There is an important shift that happens here and for conventional intellectual property lawyers; it is one that can offer a very specific anxiety. For what is being evoked by Hopi in the term “intellectual property” is the meta-meaning that implies some kind of property in culture. The HCPO is using Western laws in a way that requires them to accommodate a different cultural sense of what is owned, by whom and under what conditions. Hill (2002) expresses a number of problems with this notion, ones which echo those a conventional intellectual property lawyer would raise, and thus show some of the dilemmas of marshaling intellectual property to Hopi ends. He writes, “since the Hopi language was devised by no individual, living or dead, but solely by linguistic evolution within a whole community, the legal notion of an intellectual property right within American law seems inappropriate” (2002: 307). This is certainly a valid point about the Enlightenment-based notions of innovation and authorship embedded in IP law. And it suggests the challenges of repositioning Euro-American forms of liberal individualism through the property paradigm, into an Indigenous context. This is especially true of the often unintended consequences that work to make something a “property”—that is, an exclusionary possession of the sort that is ultimately antithetical to the specific cultural rules of obligation, responsibility and circulation that Hopi ground notions of knowledge transmission that conventional IP law cannot acknowledge.

But there is a bigger issue here, and this is in the misrecognition of the various ways in which language can be made into a form of property, through its tokenization and representation as texts. Language—particularly in the kinds of Indigenous language manuscripts previously described in the two Hopi examples—enters into a field of property relations as a text-artifact with attribution to some select number of identifiable author(s) or authorities, in ways that inevitably occlude and exclude others up and down the chain of transmission. The question of how far the notion of property extends is open. To which dimension of language would copyright protection pertain—a soundwave; a set of grammatical rules; a phoneme inventory; rights to graphic inscription? If all these are rendered in some tangible, recorded or documented form, then yes, copyright protection is automatically activated. From a Hopi standpoint, however, the question really is can intellectual property be used to control the access and circulation of language understood as esoteric knowledge—that is, not only the token instantiation of language protected under copyright, but the typified knowledge expressed therein? And this seems to be something perpetually beyond the scope of intellectual property, since it is the circulation, and not the instantiation, that is at issue.

These questions about the limits and power of intellectual property protections, especially in the confrontation of Indigenous systems of esoteric knowledge, are at the heart of Traditional Knowledge (TK) Licenses and Labels we discussed in the previous section. In the space that remains, we consider further the non-legal device of the Labels, and then one of these Labels in particular, the “Secret/Sacred” Label. We explore how some of the semiotic ideologies undergirding the labeling tool might pertain to Hopi efforts to control access to their intangible cultural property, and end by querying what this might reveal about the future roles of Indigenous publics in the circulations of these types of cultural representations.

The semiotics of TK Labels and the production of new Indigenous publics

Although TK Labels lack legal enforceability, they are more uniquely malleable and offer themselves as social guides for action and proper use from the point of view of Indigenous communities. In this section, we explore the kinds of intervention TK Labels afford. In considering the TK Labels as semiotic and pragmatic forms, we are brought to see how they work and act both within the ideological domain of intellectual property—in particular copyright—but also beyond it, critiquing its reach, indexing different authorities, and bringing a differentiated form of juridical authority into conversation with other modes of legitimization, and even different concepts of materiality. Let’s think first about the Attribution Label (see Figure 10.1).

Of the 15 different TK Labels, this Label is the most frequently selected as it speaks directly to the problem of misattribution, historical mistakes and the erasure of Indigenous names (at an individual, family, clan and tribal level) from
the historical record. Attribution draws from the idea found in moral rights legislation of maintaining a continued connection of a (author’s) name with a work, or in this case, the custodians and/or those with appropriate responsibility. Were these Labels to be taken up in relation to Hopi material, for example, they could point back to the tribe at large. Yet, the Tribe is not necessarily the ultimate authorizing body for all cultural material circulating in institutions and contexts beyond Hopi territory. The 12 villages at Hopi function autonomously, and rights of access, use, and control over cultural material generally lies with clans and families, rather than the village or Tribe as a whole. Through Attribution Labels, the Hopi could explain this as well as develop a series of labels that point to this multiplicity, rather than being stuck in a singularity of authority that does not adequately represent the complex responsibility structures that exist. On the other hand, it could offer a unified authoritative source that the Labels point back to as a particular kind of agent bearing specific responsibility for the care and ongoing circulatory life of the materials, for example, the Hopi Tribal Council or the HCPO. But they can also be developed in ways that reflect the unique social divisions of (intellectual and other) labor, responsibility and stewardship embedded within the material itself and that continue to affect its desired routes of circulation, such as that which persist among the several Hopi clans over different aspects of immaterial culture, including language.

As the concerns over publishing the Hopi dictionary above illustrate, Indigenous regimes concerning the control and securing of intangible cultural property are not necessarily premised on the market logics that undergird Euro-American style intellectual property regimes. As such, and, unlike copyright, TK Labels are premised on opening up the spectrum of use from the conventionally more dichotomized view of materials as either wholly available (public domain) or limited with restrictions (copyright). A spectrum of access, partial openings, partial closings, and the way it affects matters of control, access, and fair use is impossible
to get at through existing intellectual property law and any licensing framework. Labels can impart more nuanced and culturally diverse ideas in the spectrum of open-ness and closed-ness, but also what constitutes ideas of "fair use" and access as well.

From a semiotic and pragmatic perspective, these TK Labels are what we might describe as "citational" forms (Nakassis 2013; see also Goodman, Tomlinson, and Richland 2014). As Nakassis explains, "the canonical citation re-presents some semiotic act, but always marked with a difference and a disavowal" (2013: 67). Following this, TK Labels can be seen to share something with copyright (their positing of ownership/attributions, their claim to mediate between an author and the public), yet also bracket copyright and, by extension, critique the system under which copyright gains significance. They do this by holding both copyright and its market logics out as potentially effective, but not necessarily so. They argue for understanding the materials they index as forms whose value can emerge as instances of intellectual property, but also something else; holding copyright in abeyance, while introducing a different mode of legitimation and authorization.

But this then begs the question—what difference can these Labels, and does labeling in general, introduce? These Labels instruct their addressees that the cultural heritage material is subject to certain restrictions that are determined by its content. They introduce a whole new indexical and cultural system, which includes the significance of place and locality, overlaid upon that which is invoked by copyright. They start to get at some of the troubles that the unfeathered circulation of public domain Indigenous materials found largely within institutional contexts pose but do so precisely by disclosing more cultural information, albeit this time of a more meta-pragmatic variety (Innes 2010).

This can be illustrated by the Secret/Sacred Label. Think initially of the irony embedded in the very idea that something like a "Secret/Sacred" Label would be needed. To whom is such a label directed? Those who have legitimate access to the material would not need to be told it was secret/sacred. The secret, sacral nature of the materials so identified would seem to point toward restricting the access of others. And this is precisely the point. Since TK Labels are used for material that is either in the public domain or in copyright to someone other than the source community, this secret or sacred material is frequently already circulating available for viewing, hearing, or sharing with the non-initiated public. In this case, the Secret/Sacred Label serves both as a warning, but also as a corrective, foregrounding different cultural practices of knowledge circulation, and announcing to these other regimes of value. They ask that one adhere to the norms of cultural practice that shape how and when the knowledge carried by these things should be seen, heard, shared (Christen 2015). They call on the addressee, for instance, to understand that an image, a song or a manuscript carries with it a range of knowledge that is not immediately translatable or accessible. It offers a warning that this material is powerful and has very specific conditions associated with it.

Further, the Secret/Sacred Label positions one as a non-initiate, as, for example, in the Sq’ewlets community (a Band of the Stó:lo First Nation) adoption
of it. While unfortunately we are unable to reproduce a screenshot of this label, it can be viewed on their site here: www.digitalisqwellets.ca. In this instance, Secret/Sacred is translated into Halkemelem as XA:XA. This is further elaborated in the following way:

In our Stó:lo culture, certain types of knowledge are restricted in some way. This knowledge is considered sacred, secret, potent and/or private, and only certain people or families can and should have access to them. We call this xa:xa in our language. This label indicates that there is additional knowledge about a certain subject that cannot be shared on the website.

After this description, the website points to examples where the label is being used, including sections relating to “Community Archaeology,” “Ancestor Mounds,” “Afterlife Belongings,” “Caring for Ancestors,” “Taking Care of Ancestors” and “Repatriation.” In general the label indicates instances on the website where there is more knowledge that exists, but cannot be shared because of its restricted nature. In perhaps one of the most striking uses, the label icon itself is placed over what would otherwise be images of ancestors (human remains). The clear point being made is that for the Sq’ewlets there is no instance where photographs or images of this kind are acceptable. Thus the Sq’ewlets cultural standpoint is elevated as the primary authority. It also works to disrupt an uncritical assumption that anything can be seen at any time.

This Label positions the viewer in the role of a non-initiate, both extending Stó:lo cultural practices of knowledge dissemination and sharing and encompassing the viewer within them. In so doing, the use of the Label effectively reinscribes the public into an Indigenous public, by instructing outsiders of their status as non-initiates. So, while the Secret/Sacred Label may introduce more information about certain cultural material than a hearer, viewer or reader may have known without the presence of the Label, in so doing the Label positions the non-initiate in the appropriate relationship vis-à-vis this cultural material. The Label thus restores something of the social relations that underlie tribal distinctions about access to knowledge. Herzfeld (2009) writes that secrecy “must itself be performed in a public fashion in order to be realized” (135). In other words, secrecy may be less about the content of a given secret, than it is about rights to index one’s knowledge of the secret, to initiate others into the secret, and to exclude others. The Label, in performing this secrecy, shapes the audience into a particular kind of public, one that is ordered by the Sq’ewlets and the Stó:lo communities.

So, what the TK Labels then protect is not necessarily the token instantiation of the cultural material—that which, in this instance, may or may not be actually protected by copyright. Rather, they function in support of maintaining the integrity of the system of knowledge control and access of the source community. Recall Minkler’s (paraphrased) words in relation to Malotki’s manuscript: Hopi religion (and much of cultural life) “is based on distinctions about who has access to sacred rituals and ceremonies” (Raymond 1990). It is precisely these kinds of distinctions that the Secret/Sacred Label, as well as the other Labels that have been developed, strive to extend.

**Intellectual property and Indigenous languages**

Many scholars have questioned the validity of property as a form of protection of Indigenous cultural expression (Brown 2003; Mezey 2007). Until recently, little theoretical attention has been paid to Indigenous language in particular as the object of intellectual property protection. Hill (2002) presents some imaginable objections to this idea in his response to the HCPO’s claim that the Hopi language is the intellectual property of the tribe. Recall that according to Hill, since the Hopi “language was devised by no individual but . . . solely by linguistic evolution within a whole community, the legal notion of an intellectual property right within American jurisprudence seems inappropriate” (307). Initiatives like the TK Labels move beyond protecting token instantiations (say, a story, word list, or image), and strive instead to incorporate something of the originary cultural systems of knowledge in which these tokens are embedded, but not necessarily as a singular form of “property.” Intellectual property law is historically uninterested in the content that makes up the property. But for Indigenous peoples it is precisely the copyrighted content that matters. It is the content where the rules of access and circulation are embedded, and the Labels seek to find a path back to this as the site of meaning and significance.

With this in mind, we may be better able to understand some of the concerns about publishing the Salt Trail manuscript or the Hopi Dictionary. Regardless of the consent documentation obtained, and the care taken to ensure that no sacred information was unduly shared, the issue remains that simply through its contextualization of the Hopi language into the form of a dictionary, entails the language undergoing just this kind of “transformation” (Silverstein 2003). The Hopi language enters into a different indexical system, where the entries may be understood as tokens that point to semantico-grammatical regularities, rather than immanent cultural norms (cf. Silverstein 2015 for more on potential danger of transformation in relation to repatriation of archival linguistic data). As such, and regardless of how much it may be desired or needed, it is not clear that something like the dictionary could have been created without violating the indexical system of the transmission of knowledge (navori), or put more optimistically, proffering another contextualization of the language.

At the same time, it is possible that something like the Hopi Dictionary is actually more Janus-faced, insofar as that, while it might threaten to undercut a system of cultural transmission on one side, it can also be seen as generative, in the way it expands the horizon of possible Indigenous publcs. The Secret/Sacred Label in the Local Contexts initiative, offers the possibility for other categories of knowledge organization that reflect more localized Indigenous epistemological framing. In signaling that there is a secret and sacred component, the Hopi dictionary potentially invites a new audience to differently appreciate such a text-artifact through a Hopi-normed public sphere.
their opponents, Hopi officials stood fast in their claim that the book threatened to disclose certain elements of Hopi esoteric knowledge, the access to which is closely controlled by certain Hopi tribal members—initiates and clan members—against unauthorized disclosure to others, especially other Hopi. We then explored how a similar set of competing ethics shaped the controversy that erupted over the publication of the Hopi Dictionary/Hopiikwa LaveyAyitavi (1997). Insofar as the dictionary, co-produced with significant input from certain members, scholars and elders of the Hopi tribe itself, was the object of similar objections, we considered how the Hopi Cultural Preservation’s Office’s commitments to non-disclosure of their sacred knowledge extended to the language itself, and whether the Hopi language could be understood as a kind of intellectual cultural material.

Our focus in this chapter on these matters was prompted largely in response to our collective observations that Euro-American legal and conceptual frameworks of intellectual property are increasingly being taken up by certain Native communities as one specific strategy to protect their newly generated and older language resources.

We have focused primarily on the Hopi, in which control over the circulation of knowledge is paramount to social relationships within the community, and also between the community and outside groups, a condition which brings these issues to the forefront (but, see Nyah 2015 for examples from Chile). But we think the tension on display in these instances have their resonances across a variety of contexts where Indigenous material and immaterial properties are finding their ways into non-Indigenous databases, archives and other institutions both virtual and actual. And what we have been struck by is the way in which the negotiation itself constitutes not just a tension—a site of conflict—but also of promise, and potential. Indeed, one of the greatest ironies revealed by all of these encounters is precisely the vitality that remains in the social force and efficacy that native peoples’ ethical and normative commitments to their cultural property still have. Though intellectual property tools are nominally invoked in each of these contexts, we discover that, in the end, those tools often have less legal bite than they do a deep ethical and moral aversion. In a way then, we might say that the ethical sphere shaping community relationships vis-à-vis navoti was actually expanded, rather than contracted, by these controversies, and with it a particular, uniquely Hopi ethic, relationship of duties and obligations forged by and through the co-managed use (or non-use, as the case may be) of this intangible cultural property.

It is this co-management that we feel to be the fertile ground within which the issues over ownership that NAGRPA brought to the fore and continue to be played out in non-NAGRPA contexts. This is exemplified by the efforts of one of us, Anderson, to realize a structured, practical application of this potentiality. The TK Labels provide one instantiation of the challenges and promises that the life of Indigenous cultural property since NAGRPA engenders. In focusing on the TK Labels as a citational semiotic form that bridges the logics of intellectual property and Indigenous regimes of proprietary knowledge, we have highlighted the Janus-faced nature of such an intervention. This intervention, and others like it, potentially undercut received modes of cultural transmission and knowledge.
dissemination, and at the same time introduce new, and perhaps unexpected domains for future Indigenous publics. As such, and in no small sense, we believe that the rise of systems like the TK Labels, along with the other negotiations over matters of Indigenous intangible cultural property and its dissemination and access, are suggestive of the ways in which the publics of those materials are, if not themselves indigenized, nonetheless tied up in nascent Indigenous webs of relationship, duty, authority and obligation that we hope are taken up more responsibly and respectfully.

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Note

1 The lack of accessible documents detailing this agreement does not allow us to give a clear sense of why the period of ten years was negotiated.

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