



## *Foundational Document*

### *Position Statement Indigenous Knowledge in Canada's Copyright Act*

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## **Position Statement Indigenous Knowledge in Canada's Copyright Act**

### **ISSUE:**

Canada's Copyright Act does not protect Indigenous knowledge, which may be found in published works as a result of research or appropriation. In Canadian law, the author of a published work holds the legal copyright to that knowledge or cultural expression, while the Indigenous peoples from whom the knowledge originated have lost their ownership rights.

### **BACKGROUND:**

Indigenous knowledge and cultural expressions include but are not limited to tangible and intangible expressions including oral traditions, songs, dance, storytelling, anecdotes, place names, and hereditary names. Indigenous refers to First Nations, Métis and Inuit peoples of Canada.

Indigenous knowledge is dynamic and has been sustained and transformed. Indigenous people continue to produce new knowledge in new media including music, theatre and dance, photographs, film, poetry, literary expression, language applications, blogs, social media, digital collections, etc.

Who holds "legal" copyright to that knowledge or cultural expression under Canada's current Copyright Act is often contrary to Indigenous notions of copyright ownership. Indigenous knowledge may be found in published works as a result of research or appropriation, and in these cases, the author of the published work holds the "legal" copyright to that knowledge or cultural expression, while Indigenous peoples would see the owners as the people from where the knowledge originated. As in Western notions of copyright, Indigenous peoples regard unauthorized use of their cultural expressions as theft.

Canadian libraries, some of which hold archives, are beginning to partner with Indigenous peoples for the collection, preservation and provision of access to Indigenous knowledge. Research libraries may act as repositories for scientific data gathered in collaboration with Indigenous peoples. Libraries hold, and provide access to, collections of Indigenous knowledge, artifacts and cultural expression, with an emerging understanding that the concerns and wishes of Indigenous peoples should be addressed in order to ensure the ongoing collection and preservation of such content. Libraries rely on agreements with donors and aim to follow Indigenous protocols when they work with communities.

**ANALYSIS:**

Our recommendations are informed and can be read in the context of the CFLA-FCAB Truth and Reconciliation Committee Report (2017), which made 10 key recommendations, including #8, which specifically addressed intellectual property concerns. Canada's Copyright Act must take steps to include protection of Indigenous knowledge and languages and ensure that Indigenous peoples can actively benefit from sharing but also maintaining agency over their own knowledge. This can be achieved through consulting with Indigenous peoples in Canada and including protection of Indigenous knowledge in Canada's legislation as understanding of the needs evolves. On the international level, this understanding may arise through the work of the World Intellectual Property Organization (WIPO) – Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and the exploration of national experiences in that forum.

Canada's work in this area must accord with the *UN Declaration on the Rights of Indigenous Peoples*, noting in particular Article 31:

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

**RECOMMENDATION:**

***CFLA-FCAB recommends that the Copyright Act respect, affirm and recognize Indigenous peoples ownership of their traditional and living respective Indigenous knowledge.***

***Indigenous refers to First Nations, Métis and Inuit peoples of Canada.***

The Government of Canada should work with Indigenous peoples in Canada to explore mechanisms to protect Indigenous knowledge from unauthorized use through copyright legislation and to ensure that Indigenous concepts of ownership are respected, while enabling the originating community to actively exploit the knowledge.

Canada's implementation of protection of Indigenous knowledge must ensure that contracts and licenses cannot override rights accorded through legislation. We recommend that Indigenous knowledge be respected in public domain works through the acknowledgement of community and knowledge origin. In unique cases, such as sacred or private information, there may be a necessity to include a right to regain ownership of some Indigenous knowledge, even if the work has lapsed into the public domain. These concerns must be addressed through protocol agreements with Indigenous communities on care of collections and contested items.

Flexibility in our international agreements should be maintained for concepts of Indigenous knowledge and its uses in Canada to be defined at regional, provincial and territorial levels, through consultation with elders and leaders of all Indigenous communities. Canada should include participation by Indigenous peoples in discussions at the World Intellectual Property Organization.