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# The Protection of Indigenous Intellectual Property Rights

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# The Protection of Indigenous Intellectual Property Rights

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## The Problem

IP rights derived from British statutes of the 17th-18th centuries bestow moral and economic rights to individual creators. As such, the legal protections privilege settler/colonial understandings of knowledge creation that preclude notions of collective rights.

## Defining Indigenous IP

Often associated with Traditional Knowledge (TK), defined by the World Intellectual Property Organization as: “tradition-based literary, artistic or scientific works.”<sup>1</sup> The following qualities of TK typically render it beyond the scope of existing IP laws:

- Community-based
- No single author
- Public domain by default
- Holistic; non-linear

## Where Libraries Fit In

Like other memory institutions, libraries have been complicit in marginalizing indigenous peoples’ histories and cultures. Academic libraries and archives continue to house materials created by or about indigenous peoples, often acquired without prior consent or awareness of the applicable indigenous cultural protocols.

## Reports and Recommendations

### CFLA-FCAB Report & Recommendations<sup>2</sup>



- + Indigenous Knowledge Protection protocols
- + Reform the *Copyright Act*
- + Robust deselection process
- No community consultations

### Truth & Reconciliation Commission



“[I]ntegrating Indigenous knowledge systems, oral histories, laws, protocols, and connections to the land into the reconciliation process [is] essential.”<sup>3</sup>

### UN Declaration on the Rights of Indigenous Peoples (UNDRIP)



- + Article 31 – IP rights: “maintain, control, protect and develop”
- + Article 11 – “free, prior and informed consent” standard
- Non-legally binding

## Moving Forward

- Advocate both within and without the legal system
- Enact indigenous cultural protocols and UN standards
- Recognize collective rights & restore control to communities

A shift in power dynamics is in order

“Non-indigenous librarians must reflect on their own implication in the relationship with indigenous peoples and actively share their control over the library space to allow indigenous cultural self-determination.”<sup>4</sup>



## References

- <sup>1</sup> World Intellectual Property Organization. (2002). Traditional knowledge – operational terms and definitions. WIPO/GRTKF/IC/3/9, 25. Retrieved from [www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic.../wipo\\_grtkf\\_ic\\_3\\_9-main1.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic.../wipo_grtkf_ic_3_9-main1.doc)
- <sup>2</sup> Canadian Federation of Library Associations-Fédération canadienne des associations de bibliothèques (CFLA-FCAB). (2017). *Truth and reconciliation report and recommendations*. Retrieved from <https://librarianship.ca/news/cfla-trc-report/>
- <sup>3</sup> Truth and Reconciliation Commission of Canada. (2015). What we have learned: Principles of truth and reconciliation, 126. Retrieved from <http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Principles%20of%20Truth%20and%20Reconciliation.pdf>
- <sup>4</sup> Roy, L., & Hogan, K. 2010. “We collect, organize, preserve, and provide access, with respect: Indigenous Peoples’ cultural life in libraries.” In J. Biando Edwards and S. P. Edwards (Eds.), *Beyond Article 19: Libraries and social and cultural rights*, 146. Duluth, MN: Library Juice Press.