

# (Re)connecting with Indigenous cultural expression(s): Emerging frameworks for empowering Indigenous voices, agency, and authority

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## Abstract

This essay explores the global paradigm shift from marginalization and diminishment to recognition and respect of Indigenous cultures. Drawing on recent developments, it highlights laws, policies, and practices aimed at reconnecting Indigenous communities with their cultural expressions. Three key frameworks emerge as pathways for empowering Indigenous voices and agency: (1) authority, emphasizing Tribal sovereignty and self-determination in cultural stewardship; (2) voice, showcasing a renaissance in Indigenous representation across arts, media, and literature, as well as institutional shifts prioritizing Indigenous narratives; and (3) agency, where engagement fosters understanding and informed decision-making. Through these frameworks, cultural agencies and institutions are adopting community-driven practices, co-curating collections, and revising policies to honor Indigenous knowledge and approaches. By centering Indigenous authority, amplifying voices, and fostering authentic consultations, this paradigm shift not only helps address historical injustices but also strengthens cultural resilience and vibrancy. By integrating legal, ethical, and cultural considerations, cultural institutions can support a future where Indigenous voices are not only heard, but also actively shape the narrative of Indigenous heritage and rights.

## Keywords

Principles of library and information science, copyright/intellectual property, global perspectives on libraries and information, cultural heritage management

We are in the midst of a global paradigm shift affecting Indigenous Peoples, from a posture of diminishment and forced assimilation to one of recognition and respect. And the shift taking place is profound.

A week before this symposium,<sup>1</sup> the US Department of the Interior Secretary Deb Haaland—a member of the Pueblo of Laguna, a 35th-generation New Mexican, and the first Native American to serve as a US Cabinet Secretary—released an investigative report documenting the former policies of the USA and other nations of forced assimilation by sending Indigenous children to government boarding schools (US Department of the Interior, 2024a, 2024c). This report, the second to come out of a three-year investigation that is part of a comprehensive Federal Boarding School Initiative, builds on the first, which specifies the ways in which children were separated from their families and cultures, then intentionally grouped

together—up to 31 separate Tribes at a time—to further the detachment from cultural understanding. Quoting a 1969 Senate investigation, the Department of the Interior (2022: 44, 51) reiterated that, “[o]ften using active or decommissioned military sites,” boarding schools “were designed to separate a child from his reservation and family, strip him of his Tribal lore and mores, force the complete abandonment of his native language, and prepare him for never returning to his people.”<sup>2</sup>

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The Department of the Interior's programs and policies, like those of many agencies throughout the US government, now recognize that cultural engagement and continuity is essential to identity, health, and well-being. Indeed, the investigative report seeks to affirm the Department's express policies of cultural revitalization, supporting the work of Indian Tribes, Alaska Native Villages, and the Native Hawaiian Community to revitalize their languages, cultural practices, and traditional food systems, and protect and strengthen intra-Tribal relations—all of which is critical to both healing and flourishing. Shortly after this symposium, the US president issued a formal apology on behalf of the US government for the 150-year national boarding school policy.

As an example of the global paradigm shift, I will describe how change is emerging in the conversations in the USA and in the ways in which cultural agencies and organizations are approaching their work. These changes include building the capacity of Indigenous-led cultural organizations and—for non-Indigenous-led institutions—engaging directly and respectfully with Indigenous communities.

From my experience, I have seen three types of “frameworks” or tools to put that respect into practice regarding Indigenous cultural activity: (1) empowerment through Indigenous authority; (2) empowerment through Indigenous voices; and (3) empowerment through consultations that promote Indigenous agency. After first describing these three frameworks, I will provide examples of how the Library of Congress and US Copyright Office are utilizing them to connect and reconnect Indigenous communities to cultural expressions.

Before we get to these three frameworks, I share a few observations to provide a bit of context about frameworks in general. First, we all function within the context of a variety of legal systems at the very same time, including local, Tribal, national, and international. At all times, we are navigating through different laws, protocols, and constructs. We thus need approaches for making connections among these systems where possible, and helping each other to understand different ways of seeing the world. The frameworks that I will be exploring help us do that.

Consider the “Rubin Vase” as an example of how people are affected by their own experiences and approach critical issues differently, depending on their perspectives. The vase is an optical illusion that uses two colors to achieve its effect. If you focus on one color, it looks like a vase, but if you focus on the other, it looks like faces. Of course, it is both, depending on how you look at the image. It is helpful to keep this in mind when thinking about the

perspectives of others—perspectives that may seem to be the complete opposite of how one is thinking. Sometimes, it can seem like we structure our respective legal systems that way as well. Yet seeing from others' perspectives can be transformative: the groundbreaking Sarr–Savoy report commissioned by President Emmanuel Macron changed France's approach to repatriation by—as described by visual culture theorist and New York University Professor Nicholas Mirzoeff (2019)—“making the simple choice to consider African materials from an African point of view.”

Second, let me provide a brief introduction to the US cultural agencies, the Copyright Office, and the Library of Congress. Within the federal government of the USA, laws and processes interact with one another in many ways to support Indigenous cultural expressions. For example, the National Foundation on the Arts and the Humanities is charged by law with developing and promoting a broadly conceived national policy of support for the arts and the humanities throughout our nation, including Indigenous communities. The Foundation consists of three “cultural” agencies—the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services—which all together, and respectively, advance cultural vitality through support for artists, scholars, and a wide range of cultural practitioners and approaches.<sup>3</sup> These cultural agencies work in conjunction with other entities to promote creativity and cultural engagement, including the US Copyright Office.

In the USA, the purpose of copyright is reflected in our Constitution: “to promote the Progress of Science and the useful Arts.”<sup>4</sup> As part of the Library of Congress since 1870, and recognized by Congress as a separate department of the Library since 1897, the Copyright Office registers copyright claims, records information about copyright ownership, provides information to the public, and assists Congress and other parts of the government on a wide range of copyright issues, both simple and complex. For example, it recently issued the first part of its report on copyright and artificial intelligence, in which it recommended that Congress establish a federal right that protects all individuals during their lifetime from the knowing distribution of unauthorized digital replicas, or deep fakes, of their image or voice (US Copyright Office 2024).

The Copyright Office is in the legislative branch of government, not the executive branch like many intellectual property offices around the world. Copyright registration is not required in order to enjoy legal protection, but it offers a number of meaningful benefits. Generally speaking, copyright law not only provides

economic incentives for authors to create works and make them available to the public, but also sets out a system that supports library and archival services, enabling these institutions to carry out their public-service roles of preserving and providing access to the world's cultural, artistic, historical, and scientific heritage, and advancing research and knowledge (World Intellectual Property Organization, 2023). Thus, a variety of laws support cultural engagement and activity.

Indigenous Australian attorney Terri Janke (2020: 16) has developed a visual framework for "Indigenous Cultural and Intellectual Property" (ICIP), which recognizes that different types of cultural expressions, both tangible and intangible, are supported by a variety of laws. The same is true within the USA, where laws governing ICIP include those discussed above, as well as those relating to historical preservation and cultural property—such as the Native American Graves Protection and Repatriation Act (NAGPRA), discussed below. The University of California Los Angeles School of Law Professor Angela Riley (2022) has similarly explored the range of cultural property laws within US federal and Tribal law. With this in mind, let us consider the three frameworks on empowerment that I have identified.

### **Empowerment through Indigenous authority**

Within the USA, there has been growing recognition, understanding, and communication about the history of colonization and its impact on Indigenous cultural activity and engagement. The USA is home to American Indian, Native Alaskan, Native Hawaiian, and Pacific Island communities, including 574 federally recognized Native American and Native Alaskan Tribes, in addition to other Tribal entities (Congressional Research Service, 2024).

As domestic dependent nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The USA works with Indian Tribes on a government-to-government basis to address issues concerning Indian Tribal self-government, Tribal trust resources, and Indian Tribal treaty and other rights. It was not until 1924 that the Indian Citizenship Act, or Snyder Act, recognized full US citizenship for American Indians and Alaska Native Americans. And it was not until the mid 70s to 1980s that federal programs meant to encourage prosperity through assimilation were found to be less appropriate and less effective for increasing prosperity than supporting Indian self-governance. The Indian Self-Determination and Education Assistance Act (1975) outlines federal

policy on Tribal self-determination, including the "effective and meaningful participation by the Indian people in the planning, conduct, and administration of" federal programs and services (ISDEAA, 25 U.S.C. § 5302(b)).<sup>5</sup>

We see this trend of self-determination with respect to authority and funding for cultural engagement and heritage. In 1984, dedicated funding for Tribal library and archival services was authorized by Congress. While Indian Tribes theoretically could receive some federal funding indirectly from a state, Congress found that most Tribes received little or no funds because they were considered to be separate nations, ineligible for funding. For this reason, Congress provided mechanisms under which Native American and Alaskan Tribes would receive funding directly from the federal government to develop and sustain library services.<sup>6</sup> At the last count, more than 442 Tribal libraries and cultural centers on the US mainland and Alaska have received financial support. In 1989, dedicated support was put toward the creation of a Native American museum on the National Mall—the center of Washington, DC, home of the key government offices.<sup>7</sup>

The Copyright Office was honored to participate in the 2024 Smithsonian Folklife Festival, which focused on Indigenous voices of the Americas and celebrated the 20th anniversary of the National Museum of the American Indian. This museum cares for an expansive collection of Native American objects, covering the western hemisphere from the Arctic Circle to Tierra del Fuego, and its architecture, Indigenous landscaping, and, of course, its exhibits are designed with Indigenous leadership from different communities. Even the menu at the museum café reflects this care.

When the museum opened 20 years ago, and similar to support for library services, Congress authorized direct funding through the Museum and Library Services Act of 2003 to Native American Tribes and Native Hawaiian organizations to support museum services throughout the nation and sustain Indigenous heritage, culture, and knowledge.<sup>8</sup>

One positive outcome of the COVID-19 pandemic is that the Federal Communications Commission—one of the agencies in charge of telecommunications, Internet access, and broadband—recognized the importance of direct funding to Tribal libraries, colleges, and universities to serve their communities.<sup>9</sup> The Commission also has been coordinating with agencies throughout our government to further digital access and inclusion, including the cultural agencies. As a result, we have seen a shift in legislation, recognizing and placing the authority with Tribes to develop and lead programs that promote Tribal

expression and cultural heritage, and billions of dollars put to this purpose.

Important shifts also are now taking place, with federal funding for Tribal arts and humanities, both within the government<sup>10</sup> and through non-governmental sources. Recognizing Tribal control and organizational leadership, and funding Tribal members and communities directly—empowerment through Indigenous authority—leads to the next framework.

### **Empowerment through Indigenous voices**

Within the USA, we are in a time of increased and empowered Indigenous voice and visibility—or, as journalist Kate Nelson (2023), Alaska Native Tlingit Tribal member, described the year 2023: “We’re witnessing an undeniable Native American awakening right now. From Washington, D.C. to Hollywood, centuries of historic erasure and exploitation are slowly being righted with a focus on honest Indigenous stories and discussions.” The changes in even just the last few years have been extraordinary. Native voices and content are burgeoning. Jeffrey Gibson, a member of the Mississippi Band of Choctaw Indians and of Cherokee descent, became the first Indigenous artist chosen to represent the USA with a solo exhibition at the Venice Biennale, which is considered the Olympics of the art world (Steinhauer, 2024). Joy Harjo, a citizen of the Muscogee Nation and a member of Hickory Ground, was appointed the first Native American Poet Laureate in the history of the country. We see this attention in everything from *Reservation Dogs*, a coming-of-age comedy series, to *Killers of the Flower Moon*, a book, then a movie, which explores the 1920s murders of the Osage people and garnered actor Lily Gladstone the first Oscar nomination for best actress and the first Golden Globe awarded to a Native American woman. You can now watch *Star Wars* in the Navajo language and *Prey* in Comanche, and films in Indigenous languages that are dubbed into other languages, including English and Spanish. As Nelson (2023) observes: “These authentic depictions are wooing mainstream audiences while shattering outdated stereotypes.” As author Tommy Orange explains:

we haven’t been hearing all of the different kinds of Native stories, the histories that run counter to the way that the American narrative has been told. We can’t heal from something unless we acknowledge it and accept it for what it is, and if we can’t do that together, it feels like the American consciousness is actually

denying the basic narrative about what happened. (Laubernds, 2018)

The boarding school investigation that I described earlier focused on ways to empower Indigenous voices. In her “Road to Healing” tour, Interior Secretary Haaland traveled throughout the nation to hear directly from survivors about their experiences in the federal Indian boarding school system. As then Assistant Secretary for Indian Affairs Bryan Newland (Bay Mills Community, Ojibwe) observed:

We have witnessed a change in our nation’s understanding of these schools in a short period of time. Survivors and leaders have begun efforts to explain the legacy and impacts of Indian boarding schools on local communities across Indian country. Universities ... have begun to own actions to redress for their role ... Popular books, television shows, and films have discussed these institutions and humanized this history for wide audiences. Courts and members of Congress have engaged in a dialogue on the policies and laws advanced by this system. (US Department of the Interior, 2024a: 5)

The Library of Congress announced that it will preserve a collection of the oral histories of survivors of the schools. As Dr Carla Hayden, the Librarian of Congress, explained: “Placing them in the care of [the Library’s] American Folklife Center will ensure that this collection of stories remains available as a resource, lesson and reminder for posterity” (US Department of the Interior, 2024b). In short, there is empowerment through Indigenous voice and speaking truths together.

I have been inspired by the Copyright Office’s public exhibit exploring the theme “Find Yourself in Copyright” (US Copyright Office, n.d.) and thinking, in particular, about what that means for Indigenous authors and creators, including those who are pursuing traditional arts. How can we empower voices and stories, and recognize the ways in which copyright supports Indigenous creativity and how it works in conjunction with other laws and systems? Representation and engagement are priorities of the Copyright Office, as reflected in the “Copyright for All” goal in its 2022–2026 *strategic plan: Fostering creativity and enriching culture* (US Copyright Office, 2022).

### **Empowerment through consultations that promote Indigenous agency**

Finally, we are also seeing important shifts happening with respect to legal and other mechanisms that support “agency”—the sense of power and capacity to influence others. I am going to discuss how these

are being established through both presidential and legislative action.

In 2021, for example, the White House issued guidance on “Tribal consultation and strengthening nation-to-nation relationships,” prioritizing the following three principles: respecting Tribal sovereignty and self-governance; fulfilling trust and treaty obligations; and engaging in “regular, meaningful, and robust consultation” with Tribes (Executive Office of the President, 2021: 7491). In establishing “uniform standards for Tribal consultation,” the White House explained:

The United States has a unique, legally affirmed Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations, which is recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. The United States recognizes the right of Tribal governments to self-govern and supports Tribal sovereignty and self-determination. The United States also has a unique trust relationship with and responsibility to protect and support Tribal Nations. In recognition of this unique legal relationship, and to strengthen the government-to-government relationship ... all executive departments and agencies (agencies) [are charged] with engaging in regular, meaningful, and robust consultation with Tribal officials. (Executive Office of the President, 2022b: 74479)

While presidents since the 1970s have called for some form of nation-to-nation consultations, many US agencies have not had a practice of engaging in them. This guidance sets out planning and notice requirements, and we are seeing the impact of these consultations, as well as more robust Tribal Nation summits, which bring together Tribal leadership with the White House. The guidance describes formal consultation, listening sessions, and information-sharing, and it is becoming more well known as a framework for engagement. The US Patent and Trademark Office (2023) recently engaged in its first nation-to-nation consultation, seeking to inform negotiations taking place at the World Intellectual Property Organization’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (traditional cultural expressions) regarding how best to protect the genetic resources, traditional knowledge, and traditional cultural expressions of Indigenous Peoples.

An area of significant change resulting from such consultation is the incorporation of “Indigenous Knowledge” into governmental decision-making. In 2022, the White House, through its Office of Science and Technology Policy and Council on

Economic Quality, issued guidance that formally recognizes Indigenous Knowledge as one of the many important bodies of knowledge that contribute to the scientific, technical, social, and economic advancements of the USA and our collective understanding of the natural world. It reflects that

Indigenous Knowledge is a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, cultural, and spiritual systems. (Executive Office of the President, 2022a: 4)

To develop the guidance, the White House engaged more than 1000 individuals, organizations, and Tribal Nations to elevate Indigenous Knowledge in federal decision-making. This included nation-to-nation consultations, meetings between federal and Tribal leadership, public listening sessions, input from more than 100 federally recognized Tribes, Native Hawaiian and Pacific Islanders, a Native and Indigenous Youth Roundtable, conference outreach, and dozens of individual meetings with others with experience and expertise in Indigenous Knowledge.

The resulting guidance is significant: the US government recognizes not only Indigenous Knowledge as the evidentiary basis of support for federal policies, decision-making, and actions, but also the critical importance of ensuring that consideration and inclusion of Indigenous Knowledge is guided by respect for the sovereignty and self-determination of Tribal Nations; the nation-to-nation relationship between the USA and Tribal Nations as well as the USA’s trust responsibility; and the need for the consent of and honest engagement with Tribal Nations and Indigenous Peoples. “Indigenous Peoples” refers to “Native Americans, Alaska Natives, Native Hawaiians, Pacific Islanders, and Indigenous Peoples whose ancestors have occupied what is now known as the United States since time immemorial, including members of Tribal Nations” (Executive Office of the President, 2022a: 1n3).

The guidance also sets out a framework for “Growing and Maintaining Relationships.” It expressly states that “[i]n light of the injustice and marginalization of Indigenous Peoples, it is incumbent on agencies to make sustained efforts to build and maintain trust to support Indigenous Knowledge” (Executive Office of the President, 2022a: 8), setting out principles and practices for agencies to incorporate into their own programs and activities, including:

- Acknowledge historical context and past injustice: the guidance recognizes that the genocide and ethnocide of Indigenous Peoples in the USA is well documented, and that federal policies have systematically served to assimilate and displace Native people and eradicate Native cultures.
- Practice early and sustained engagement.
- Earn and maintain trust.
- Respect different processes and world views: the guidance recognizes, for example, that Haudenosaunee Chiefs rely on extensive deliberation and consensus-building to consider the ways in which decisions can impact the well-being of the next seven generations. This Seventh Generation Principle, shared among many Tribes, reflects a holistic understanding of the world and the human place within it, and is embedded in songs and prayers, ceremonies, dances, storytelling, arts and technologies, and language, among other practices and cultural expressions.
- Recognize challenges.
- Consider co-management and co-stewardship structures.
- Pursue the co-production of knowledge.

Finally, the guidance discusses illustrative US laws for which Indigenous Knowledge may be relevant, including historic preservation (Executive Office of the President, 2022a: 5–8).

In the USA, we also have cultural heritage laws that establish consultation processes. One example is NAGPRA, a groundbreaking law passed by Congress in 1990 that requires museums and federally funded institutions to return Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that have been wrongfully removed from lineal descendants, Indian Tribes, and Native Hawaiian Organizations.<sup>11</sup> When it was first enacted, NAGPRA set up an innovative process to compel museums that received federal funding to review all objects that were potentially subject to repatriation and to consult with federally recognized Tribes about the objects.

As a result of lessons learned over the past three decades, and in consultation with Tribal representatives and museums, the Department of the Interior (2023) issued a new set of regulations, which clarify the repatriation process.<sup>12</sup> Some notable changes include:

- Requiring museums and federal agencies to obtain free, prior, and informed consent from

lineal descendants, Tribes, or Native Hawaiian Organizations before allowing any exhibition of, access to, or research on human remains or covered cultural items. Thus, museums have been considering whether they should have such items on display without clear consent from culturally affiliated Tribes.

- Strengthening the authority and role of Tribes and Native Hawaiian Organizations in the repatriation process by requiring deference to the Indigenous Knowledge of lineal descendants, Tribes, and Native Hawaiian Organizations. This includes making a reasonable and good-faith effort to incorporate and accommodate the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian Organizations in the storage, treatment, and handling of human remains or cultural items.
- Applying more structured and precise deadlines for various steps in the consultation and repatriation process in an attempt to repatriate items more quickly.
- Increasing the transparency and reporting of holdings or collections and shedding light on collections currently unreported under the existing regulations.

NAGPRA specifies forms of Indigenous Knowledge—such as linguistic, folkloric, oral traditional evidence, and Tribal expert opinion—as necessary information for determining the affiliation and repatriation of Native American human remains and cultural items. Incorporating deference to Indigenous Knowledge and free, prior, and informed consent prior to exhibition and research on covered cultural items is a significant change—building upon essential respect for human remains. Compliance with the new rules has played out on the public stage, providing insight into the ways in which museums are in consultation with Tribes. For some museums, little change was required. For others, the experience was different. For example, within a year after entering his new position as president of the American Museum of Natural History, Dr Sean Decatur (2024) issued a statement describing significant changes to the ways in which the museum would handle and exhibit collections relating to the Indigenous cultures of North America, including the exhibits on the Eastern Woodlands and the Great Plains. Perhaps the most notable was closing several widely visited halls. In his statement, President Decatur observed:

While the actions we are taking this week may seem sudden, they reflect a growing urgency among all museums to change their relationships to, and

representation of, Indigenous cultures. The Halls we are closing are vestiges of an era when museums such as ours did not respect the values, perspectives, and indeed shared humanity of Indigenous peoples. (Decatur, 2024)

And the changes to practice made thus far are significant. They are deeply grounded in relationship-building, expanding institutional capacity, changing mindsets and conveying that collections reflect not “dead” but living cultures, and emphasizing continuity and resilience. These concepts, of course, are reflected in the substance and spirit of the consultation guidelines. The museum has co-created and curated a new exhibit with area Tribes, including the Haudenosaunee. Moreover, the museum is changing the way it is developing educational materials—creating new resources with greater and more nuanced information to support schools.

Widely discussed recommendations for collections-based institutions that may have objects subject to NAGPRA include redefining goals and values to center on the desires and needs of Indian Tribes and Native Hawaiian Organizations; building genuine and transparent relationships with Indian Tribes; and removing items from display and research prior to and during the consultation process.

While NAGPRA applies in very specific circumstances, it influences practice far outside of its purview. Many of us took note recently, for example, when the law provided a framework and inspiration for the “repatriation” of P-22, a popular mountain lion who lived in Los Angeles, California. His death last year sparked debate between the Tribes in the Los Angeles area and wildlife officials over his proper burial. Also at stake was whether scientists could keep samples of the mountain lion’s remains for future testing and research. Biologists and conservationists wanted to retain samples of P-22’s tissue, fur, and whiskers for scientific testing to aid in future wildlife research, and the Natural History Museum of Los Angeles was given custody of the cougar’s remains. But some representatives of the Chumash, Tataviam, and Tongva peoples said that his body should be returned, untouched, to the ancestral lands where he spent his life, so he could be honored with a traditional burial. Consultations between the museum and Tribal members culminated in a traditional Tribal burial that included songs, prayers, and sage smoke cleansings, as described by Alan Salazar, a Tribal member of the Fernandeano Tataviam Band of Mission Indians and a descendent of the Chumash Tribe (Dazio, 2023). This ceremony was complemented with a celebration of life that

brought together groups from throughout the Los Angeles area.

We are also seeing ways in which the NAGPRA framework—now more than 30 years from the enactment of the original 1990 law on human remains—is influencing international partnerships and communications. While NAGPRA applies to US agencies and institutions, Tribes are not necessarily bound by national borders. The Lenni Lenape Tribe, who once made their home in New York and New Jersey, now have Tribal lands in the USA and Ontario, Canada. International engagement was required for the recent repatriation of a sacred cultural item held in a museum in Sweden but belonging to the Yaqui Tribe located on lands that cross the US–Mexico border—in both Arizona and Sonora, Mexico.

The White House Council on Native American Affairs, which works across the government and through regular Tribal–federal engagement, launched the International Repatriation Museum Exchange—an initiative designed to address challenges affecting the repatriation of Native American heritage. By bringing together Tribal community leaders, international museum practitioners, and government representatives, this program aims to encourage positive relationships between Tribes and international museums with the long-term goal of facilitating the return of cultural heritage. It also aims to develop best practices on international repatriation and address a technological challenge. In the wake of consultations with Tribes, it is clear that there is a difficult information gap that frustrates repatriations. Museum inventories exist but are not always public and user-friendly, or even fully digital and accessible remotely. The program seeks potential solutions to this technical challenge and more standard operating procedures for identifying heritage of interest (while also recognizing cultural sensitivities here).

As another example, the White House Council on Native American Affairs is preparing new guidance to help ensure that Native American ancestors and cultural items located abroad are returned home in a respectful and dignified manner. The document is being developed utilizing the Tribal nation-to-nation consultation process and consistent with NAGPRA frameworks. While there is no requirement for non-US government agencies to follow either of these frameworks, the guidance is being developed with the understanding that both frameworks are known to both Native American communities and US government agencies, essentially serving as good practices to support practical decision-making.

## Back to the work of the Library of Congress

The Library of Congress is incorporating all of these types of practices in its operations. In recognition of the paradigm shift we have been discussing—and to better carry out its mission—the Library established a Native American Collections Working Group with representation from offices throughout the Library, including the US Copyright Office.

The Library is engaged in a comprehensive review of the names and language used in its catalogues and when describing collections, and recently appointed a specialist to help engage with Tribes and advise on how to proceed with changing subject headings for Indigenous Peoples—to reflect and respect community preferences. The Library’s work benefits, as well, from other developments in the Tribal library community, which expand understanding of Indigenous history and knowledge. In 2024, for example, the Saginaw Chippewa Indian Tribe of Michigan announced the introduction of Maawn Doobiigeng (Gather Together), a new classification system for its libraries (Saginaw Chippewa Tribal Libraries, n.d.). With funding from the Institute of Museum and Library Services, this system was developed through an assessment of current cataloging and classification systems, and a reorganization according to Anishinaabe ways of knowing and being. “Anishinaabe” refers to a group of culturally related Indigenous Peoples present in the Great Lakes region. The new system seeks to indigenize the Tribal libraries’ collections and serve as a framework that other libraries can use as a template for the knowledge organizations of their collections.

The Library of Congress’s policies seek to support Indigenous autonomy and agency. Coming out of the Native American Working Group is a new Collections Policy Statement on Materials Relating to Indigenous Peoples of the United States, Canada, and Mexico, recognizing the Indigenous Peoples, groups, or Nations that live on both sides of US federal borders with Canada and Mexico (Library of Congress, 2023). The statement covers materials on the contemporary and historical conditions, experiences, and lives of Indigenous Peoples. It describes the types of materials within the Library’s collections, and encourages centering collection-building around the community perspective and co-curation.

The policy statement also emphasizes that the Library strives to avoid collecting Indigenous cultural material in formats that result in its detachment—or complete removal—from local knowledge or communities of origin. Instead, the Library seeks to collect

and preserve such material for the community of origin’s knowledge purposes and, where permitted, for the public at large. The point is to make sure that communities of origin are consulted when the Library acquires Indigenous materials with potential cultural sensitivity. The policy calls for agreements between the Library and Indigenous communities to define terms for any culturally sensitive materials. Materials of cultural patrimony, if considered for collecting at all, require particular care and consultation with the appropriate authoritative groups within their Nation or communities of origin.

The Library of Congress has also adopted a new Access Policy for Culturally Sensitive Materials Relating to Indigenous Peoples of the United States, Canada, and Mexico (Library of Congress, 2024). The new policy recognizes that

the Library is responsible for some collections and single items that may contain property and knowledge of Indigenous peoples of the United States, Canada, or Mexico that are not intended to be shared outside of a community of origin, should only be shared under certain circumstances, or may be identified as sacred in nature. (Library of Congress, 2024: 1–2, Appendix A)

The policy acknowledges the need to consult with Tribal partners in determining access and use restrictions; “prioritizes Indigenous knowledge and communications from the communities documented in its collections”; sets out procedures for codifying the terms of access to collections in consultation with appropriate cultural authorities or Tribal government leaders; and reflects that “the Library and communities of origin may establish shared stewardship agreements or memorandums of understanding establishing access and use rules beyond [those] in the policy” (Library of Congress, 2024: 1).

The Library’s American Folklife Center has been collaborating with Tribes to co-curate collections since shortly after its establishment in 1976, helping to ensure that descriptive records reflect community wishes. Some years ago, the Center expanded its efforts to pilot a collaboration model with communities to enhance information about and include Tribal-provided context and usage preferences in its descriptive records. The Center provided digital materials to Tribes to use an open-source content management program called Mukurtu, the word for “dilly bag” in the language of the Warumungu of central Australia, and traditional knowledge labels (Local Contexts, n.d.), which enable Tribes to denote their use preferences for digital collection materials and thereby help end users make informed decisions

about how the materials should be attributed and used. Since its launch several years ago, the software has been used by more than 600 groups, including the Passamaquoddy Tribe, to curate their own websites and regulate access in accordance with custom.

The Center, along with other service units in the Library, also participated in the Mukurtu Shared initiative, a platform for ethically sharing and archiving Native American collections, to enable collaborative curation with Tribal communities of their collection materials held at federal archives (Mukurtu, n.d.). Finally, the Library has collaborated on a project with Washington State University to facilitate the “round trip” of descriptive metadata. The Library shares catalogue entries with Indigenous cultural institution partners, which then correct and update the metadata and return it back to the Library. This is facilitated by the Mukurtu Metadata Transformation Tool. In sum, the Library of Congress’s policies and practices seek to support both voice and agency in the representation of cultural expressions and recognize cultural equities.

Let me turn to a development within the US Copyright Office. Regulations issued by the Office to implement the 2018 Music Modernization Act<sup>13</sup> recognize the importance of contact with Tribal communities before using an exception in that law for the non-commercial use of pre-1972 ethnographic sound recordings of Alaska Native or American Indian Tribes.<sup>14</sup> In connection with the establishment of federal remedies for unauthorized uses of sound recordings fixed before 1972, Congress authorized an exception to permit certain non-commercial uses of pre-1972 sound recordings that are not being commercially exploited. To qualify for this exception, a user must file a notice of non-commercial use with the Copyright Office after conducting a good-faith, reasonable search to determine whether the recording is being commercially exploited, and the rights-owner of the sound recording must not object to the use within 90 days.

The regulation was shaped with input from the National Congress of American Indians, which informed the Copyright Office that “[o]ften such recordings are the result of anthropological or ethnographical gatherings of sound recordings, frequently capturing ceremonial or otherwise culturally significant songs,” and that

due to the circumstances of how these recordings were conducted—often without any documentation of the free and prior informed consent of the Tribal practitioners/performers—tribes today are unaware of much

of the content that they potentially hold valid copyright claims over. (US Copyright Office, 2019: 14248)

Several professors explained that “scholars have extensively documented the inequalities and ethical dilemmas surrounding early ethnographic field recording,” claiming that “ownership interests ... are presumed to have vested in and remained with the performers who recorded them,” but that “unrelated holding institutions (e.g. libraries, archives, museums, and universities) typically possess the master recordings.” In an earlier report on pre-1972 sound recordings, the Copyright Office recognized that “[e]thnographic field recordings ... are an enormous source of cultural and historical information, and come with their own unique copyright issues,” and that “librarians and archivists who deal with ethnographic materials must abide by the cultural and religious norms of those whose voices and stories are on the records” (US Copyright Office, 2019: 14248).

As a result, under the final Copyright Office regulation, someone who wants to use the exception to make non-commercial use of a pre-1972 Tribal ethnographic sound recording must contact the relevant Alaska Native or American Indian Tribe and the holding institution of the sound recording (such as a library or archive) to gather information about whether the sound recording is being commercially exploited if the user has not already obtained this information during earlier steps in the search process. As the Copyright Office (2019: 14249) explained: “the Office believes that this search step is a reasonable burden to ask prospective users of such expressions of cultural heritage in light of the complicated history of some of these sound recordings.” The regulation provides a basis for consultation and the protection of sensitive cultural materials.<sup>15</sup>

## Final thoughts

In conclusion, a variety of new developments and frameworks are empowering voices, agency, and authority in connection with cultural expressions, Traditional Knowledge, and the stewardship of cultural heritage within the US government. Whether reflected in law, policy, principles, or practices, it is clear that transparency, agency, authority, relationship-building, consultation, collaboration, co-curating, co-stewardship, and—yes—funding are critical tools to advance cultural expression and connect or reconnect communities with their heritage and cultural expressions. Libraries and archives of all types, and in partnership

with communities and each other, are leading the way in strengthening these connections.

The three frameworks described above—empowerment through Indigenous authority; empowerment through Indigenous voices; and empowerment through consultation that promotes Indigenous agency—help put recognition and respect into practice. These frameworks provide a potential road map, as well as meaningful ways for thinking through not only past actions, but also how cultural institutions can move forward in the future.

I want to share a final observation from Lily Gladstone (2023), the Oscar nominee and Golden Globe winner, when describing the movie *Killers of the Flower Moon* (2023). Gladstone is of Piegan Blackfeet, Nez Perce, and European heritage, and was raised on the Blackfeet Reservation:

Never forget this story is recent history with a lasting impact on breathing, feeling people today. It belongs to them, and we all have so much to learn from it.

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### Notes

1. On 6 and 7 August 2024, the Institute of Library Information and Investigation of the National Autonomous University of Mexico and IFLA jointly convened a symposium on Indigenous matters: “Stewarding Indigenous knowledge through ethics, law, and the archive.” This keynote, which was delivered as part of the symposium, has been annotated and edited for publication. The views expressed are solely the author’s own.
2. Quoting Senate Committee on Labor and Public Welfare (1969) “Indian education: A national tragedy—a national challenge,” (Kennedy Report), S. Rep. No. 91-501, 3 November.
3. National Foundation on the Arts and the Humanities Act (1965), Pub. L. No. 89-209 (codified at 20 U.S.C. §§ 950 *et seq.*).
4. US Constitution, Article I, § 8, Clause 8. Available at: <https://constitution.congress.gov/browse/article-1/section-8/clause-8/> (accessed 4 May 2025).
5. Indian Self-Determination and Education Assistance Act (1975), Pub. L. No. 93-638 (codified at 25 U.S.C. §§ 5301 *et seq.*).
6. Library Services and Construction Act (1984), Pub. L. No. 98-480, Title IV.
7. National Museum of the American Indian Act (1989), Pub. L. No. 101-185 (codified at 20 U.S.C. § 80q).
8. Museum and Library Services Act (2003), Pub. L. No. 108-81, § 303.
9. Schools and Libraries Universal Service Support Mechanism, 37 FCC Rcd 1458 (28 January 2022); 38 FCC Rcd 6842 (8) (21 July 2023).
10. Volume 2. of the US Department of the Interior’s (2024a) “Federal Boarding School Initiative investigative report” recognizes the impact of the boarding school system and assimilationist policies on “the ability of American Indian and Alaska Native individuals to use, develop, and transmit their languages, oral histories, and knowledge to current and future generations” (25). It recommends that the US government support community-based efforts to preserve and revitalize Indian and Native Hawaiian languages: “These investments should be available to Indian Tribes, the Native Hawaiian Community, community organizations, schools, and universities in a way that supports language learning and usage by people at all ages and stages of development, and promote ownership of intellectual property by Indian Tribes, Alaska Native Villages, and the Native Hawaiian Community” (25–26).
11. Native American Graves Protection and Repatriation Act (1990), Pub. L. No. 101-601 (codified as 25 U.S.C. §§ 3001 *et seq.*).
12. Codified as 43 C.F.R. Part 10.
13. Music Modernization Act (2018), Pub. L. 115-264.
14. See 37 C.F.R. § 201.37 (c)(vii) and implementing 17 U.S.C. § 1401(c).
15. See, for example, Library of Congress (2024: 3): “Ethical responsibilities extend beyond legal obligations (such as the term of copyright or copyright limitations and exceptions). Patrons are responsible for doing their due diligence, which may include obtaining permission from an appropriate cultural authority or tribal government leader to access and make use of a work. For example, the Music Modernization Act outlines special legal obligations for the non-commercial use of pre-1972 sound recordings, as well as regulations prescribing rules for conducting a good faith, reasonable search to determine whether a pre-1972 ethnographic sound recording of Indigenous peoples is being commercially exploited. The Library and its patrons have ethical responsibilities to honor restrictions on culturally sensitive materials that go beyond the consideration of whether a particular work is being commercially exploited by its rights holder.”

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## Author biography

**Nancy E Weiss** was appointed the Fifth Kaminstein Scholar in Residence at the US Copyright Office in January 2024. She previously served as the General Counsel of the Institute of Museum and Library Services, Senior Advisor for Information Policy, Intellectual Property, and Innovation at the White House Office of Science and Technology Policy, and Deputy General Counsel of the National Endowment for the Humanities. Weiss graduated from honors from both the University of Michigan Law School and Wharton School of the University of Pennsylvania.