Article

IFLA Journal
2026, Vol. 52(1) 16–29
© The Author(s) 2025
Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/03400352251342520
journals.sagepub.com/home/ifl
Sage

Protecting traditional cultural expressions: Law, Indigenous protocols, library practices

Ulia Gosart
Department of Information and Library Science, San José State University, San Jose, USA

Valmaine Toki
Te Piringa Faculty of Law, University of Waikato, HAMILTON, New Zealand

Susan Townzen
School of Information, San José State University, San Jose, USA

Abstract

This study responds to contemporary international policy developments focused on protecting Indigenous creative work classified as Traditional Cultural Expressions. The study claims that states' interests continue to guide policies in this area, compromising the relationship between regulations and the aspirations and needs of Indigenous communities. The study uses comparative methodology and content analysis to develop this argument. The study also highlights the significance of partnerships between Indigenous communities and cultural institutions that may function as alternative means to protect Indigenous creative works. The study explores cases from Indigenous communities and cultural institutions in New Zealand, the USA, and Mexico to develop this argument. The findings, while limited to the exploratory character of the study, may inform relevant library practices and support further research.

Keywords

Indigenous traditional knowledge, intellectual property legislation, libraries, museums, Mexico, New Zealand, policy development, USA

Background

On 24 May 2024, World Intellectual Property Organization (WIPO) member states adopted a new treaty, which offers intellectual property protections to Indigenous cultural and intellectual creations classified as Genetic Resources and Associated Traditional Knowledge (GRATK). The treaty marks the first milestone in concluding negotiations of three potential instruments to protect Indigenous creations. The treaty recognizes Indigenous communities' rights to their GRATK, especially those in the public domain (Gosart and Wendland, 2023). At the same time, its applicability to the needs of Indigenous communities may be limited, given the difficulties of aligning the intellectual property regime with the needs and aspirations of Indigenous communities.

The negotiations of two other potential instruments, focused on the protection of Indigenous works classified as Traditional Knowledge and Traditional Cultural Expressions (TCE), are ongoing at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). By July 2025, the IGC must submit the finalized texts of these instruments to the WIPO General Assembly in order to determine whether a diplomatic conference will adopt these texts into the law. Indigenous politicians participate in the IGC negotiations as observers, with no right to vote or veto the decisions of member

Corresponding author:
Ulia Gosart, Department of Information and Library Science, San José State University, 210 Carlson Library, Clarion PA, 16214, USA.
Email: uliagt@gmail.com

states' governments. As a result, their impute in the negotiations remains limited, while the states continue to drive IGC policy as they have done since the emergence of this committee (Gordon, 2013; Gosart, 2013; Graber, 2010; Jones, 2024; Maui, 2017; Zuddas and Cocco, 2021).

This study explores the degree to which the potential instrument focused on TCE protection will respond to the needs of Indigenous communities. The study projects that, despite the WIPO's intentions to support Indigenous rights, a TCE instrument will have limited relevance to the problems communities face with protection of their cultural works. While the TCE category covers a broad range of Indigenous intellectual and cultural works, its foundation in intellectual property law diverges from Indigenous communities' means of caring for their cultural works and practices.

Methodology

To develop this argument, the study compares WIPO and state solutions for the protection of TCE with the ways in which certain Indigenous communities care for their creative works. The history of the development of the TCE notion enhances this comparison, providing evidence that it is a product of non-Indigenous policy and lawmaking. The study also offers some guidance to cultural institutions staff related to the management of Indigenous collections located outside of Indigenous source communities. It suggests that cultural institutions may become proactive agents and support Indigenous communities in their struggle to protect their cultures. The study uses a case-based examination focused in New Zealand, the USA and Mexico. The selection of cases corresponded to the expertise of the authors. Despite the study's exploratory character, its case-based model may support further investigations, while its findings may generate additional studies and support relevant policy.

TCE and its relevance to Indigenous needs and aspirations

Indigenous scholars warn about the limited application of intellectual property mechanisms that protect the cultural and intellectual works of Indigenous peoples. Angela Riley, a Potawatomy scholar, stresses the significance of tribal law that address the needs, interests, and aspirations of Indigenous peoples living in the USA (Riley, 2005, 2022). Edward Ornstein, a Miccosukee attorney, adds to this argument by advocating for US federal decision-making to consider Indigenous knowledge, especially state agencies that protect Indigenous practices and items of cultural and religious significance (Ornstein, 2023). Māori scholars and political activists Aroha Te Pareake Mead and Mariameno Kapa-Kingi express concerns about the application of IP laws protecting Māori cultural resources and traditional knowledge, stressing the incompatibility between these systems and Indigenous practices and means of protecting culture (KapaKingi, 2020; Mead, 2002). And yet, international policymaking continues to rely upon IP mechanisms of protection when it comes to Indigenous works classified as Traditional Cultural Expressions.

History of TCE development

The development of the TCE framework can be traced back to the 1950s, when discussions about the protection of cultural heritage emerged at the level of separate states (Perlman, 2017). At that time, elements that would later be classified as TCE were referred to as "expressions of folklore," were treated as state cultural property, and fell under state jurisdiction. The 1967 establishment of WIPO introduced an intellectual property (IP) approach to issues of protecting cultural heritage. WIPO's mission to apply IP to "promote innovation and creativity for the economic, social and cultural development of all countries" (WIPO, 1967) was meant to generate developments primary focused on using culture for monetary and commercial profits.

The first comprehensive international measure to protect "expressions of folklore" was drafted in 1982 by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and WIPO. This measure, termed UNESCO/WIPO Model Provisions for Natural Laws on the Protection of Expressions of Folklore, aimed to protect "expressions of folklore" as part of a nation's cultural heritage. That model situated expressions under public domain, and to recognize their communities of origination, emphasized the necessity of protecting them from commercial exploitation (UNESCO/WIPO, 1982). Since then, TCE-related policy development has branched in two directions: first, in the identification of a set of mechanisms intended to protect Indigenous cultural and intellectual creations as components of cultural heritage under UNESCO, and second, in the construction of a new set of regulations that would protect Indigenous creations as intellectual property under WIPO.

Around 2000, WIPO created the IGC. The committee focused on an IP-based mechanism of protecting Indigenous creations, both tangible and intangible, and primarily on IP deemed commercially viable.

The category of Traditional Knowledge that was codified in the 1992 Convention on Biological Diversity (CBD) provided a foundation for WIPO's initial notion of Indigenous cultural creative works. UN policy developments surrounding cultural heritage protection were also considered (Figure 1).

Figure 1 demonstrates TCE's overlap within Traditional Knowledge and heritage, such that UNESCO- and CBD-based protection would be relevant but not exclusive. As WIPO has developed, TCE has branched into a separate legal category alongside Traditional Knowledge and Genetic Resources (Shrinkhal, 2024).

The major UNESCO mechanism, the 2003 UNESCO Convention on the Safeguarding of Intangible Cultural Heritage, was produced at the time when international policy makers realized the insufficiency of the term "folklore" to protection of diverse expressions of culture. As a result the purview shifted to protecting TCE-related entities as "intangible cultural heritage." The Convention defined these entities as manifesting in the following domains: (a) oral traditions, including language; (b) performing arts; (c) rituals and festive events; (d) knowledge about nature and the universe; (e) traditional craftsmanship (United Nations Educational, Scientific and Cultural Organization, 2003). The Convention excluded tangible entities and the practices that produced them; it protected heritage traditions but failed to protect the communities that created and maintained them.

The most recent UN declaration on TCE is the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP Article 31 introduced principles of human rights and property ownership to the TCE protocol, supporting Indigenous peoples' right to maintain, control, protect, and develop their traditional cultural expressions. This UN declaration identifies that states are required to take effective measures to protect the exercise of these rights (UN General Assembly, 2007). Read in conjunction with Article 3, which recognizes that Indigenous peoples have the right to self-determination, UNDRIP asserts that Indigenous communities have a right to freely "pursue their economic, social and cultural development" and, therefore, have rights to decide how and under what conditions their TCE-related works may be protected, developed, and managed (UN General Assembly, 2007).

Although UNDRIP is generally understood as a non-binding instrument, unless it is incorporated into a state-specific legislative framework, some scholars emphasize its inclusion of provisions that correspond to existing state obligations under customary international law that *may* potentially become customary law (United Nations Human Rights Council, 2024). The principles underpinning the declaration are reflected, for example, in the constitutions of Ecuador, Kenya, and the Plurinational State of Bolivia, drafted in 2008, 2010, and 2009, respectively (United Nations Human Rights Council, 2024). Others have invoked the binding nature of the declaration based on its genesis as an agreement between UN member states and peoples. An alternative approach seeks to move beyond the binding/non-binding question, and to focus instead on asserting existing rights rather than disputing the declaration's legal nature (United Nations Human Rights Council, 2024). There is a general understanding that the declaration synthesizes the spectrum of human rights already enshrined in various treaties and international jurisprudence related to Indigenous peoples' rights (United Nations Human Rights Council, 2024).

International community of policy makers granted Indigenous communities two forms of protection over Indigenous TCE: positive protection and defensive frameworks. Positive protection would allow Indigenous source communities to benefit under existing IP regulations. For example, some TCE may be copyrightable, allowing for the use of trademarks to authenticate the work of Indigenous creators and ensure their status as legitimate beneficiaries (Janke et al., 2021). Defensive frameworks help to prevent non-Indigenous people from benefiting from Indigenous works and knowledge. The preferred approach, however, remains the application of *sui generis* mechanisms that apply existing state IP regulations to specific cases. The goal is to protect and safeguard Indigenous creations, intellectual processes, and activities while incorporating both positive and defensive frameworks.

While these options are promising, codifying copyright or trademark into international regulations may be complicated, if not impossible, given the cultural diversity of Indigenous communities and differences among states' IP regulations. Additionally, some communities may have relatively well-established mechanisms in place (e.g. Maori), whereas others, e.g. Mexican artisans, may have no preexisting status as an autonomous craft or political entity under the respective registration system that would allow them legal authority over community productions. Thus, even if local Indigenous instruments may be the most effective means to ensure TCE protection, state regulations will take precedence. Additionally, the implementation of a *sui generis* option may be difficult for some communities to control or afford, given the necessity of legal representation.

National regulations and TCE

Various jurisdictions may have discrete pieces of legislation to capture and determine TCE. In the

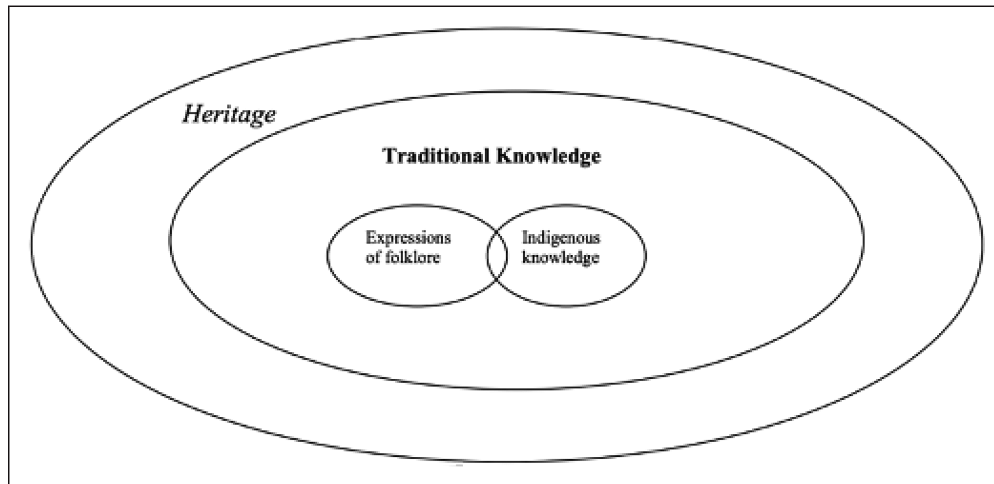

Figure 1. World Intellectual Property Organization (WIPO) fact-finding missions: traditional knowledge (adopted from UN World Intellectual Property Organization, 2001, figure 2, 26).

USA, two federal laws offer some degree of protection for tangible forms of Indigenous TCE outside of the IP system. The Indian Arts and Crafts Act (1990) is intended to prevent outsiders from imitating Native art and craft and benefiting from creating products, which supports the development of Native cultural traditions (Herlihy, 2024; Parsley, 1993). The 1990 Native American Graves Protection and Repatriation Act requires that federally funded institutions repatriate Native American remains, sacred and funerary objects, and objects of cultural patrimony, some of which may be classified as TCE (U.S. Department of the Interior, no date).

In New Zealand, the Treaty of Waitangi may be applicable to the protection of tangible and intangible forms of TCE, given that its principles are applied to the management of Māori knowledge. Through this mechanism, the government mandates state entities to incorporate Māori legal and practical norms and guidelines, or the *tikanga Māori*, into collection preservation and management (Morse, 2012). Additionally, IP based mechanisms—the Copyright Act of 1994, the Patents Act of 2013, and the Trade Marks Act of 2002—seek to address TCE, but within a commercially oriented approach based on the notion that anyone who did not produce intellectual property should not be entitled to benefit from it.

The Cultural Heritage of Indigenous and Afro-Mexican Population and Communities law was passed in 2022 in Mexico, a country that benefits from Indigenous and Afro-Mexican TCE. This legislation formalizes the rights of Indigenous and Afro-Mexican peoples and communities over their TCE's production and commerce (Gobierno de Mexico, 2022). In this setting, collective intellectual property is recognized, making Indigenous and Afro-Mexican communities the authorities over their expressions while being responsible for the protection and development of TCE and definition of its use.

This brief overview suggests that the development of state-level TCE protections is being initiated by nations that recognize the importance of their Indigenous communities' cultural creations. Nonetheless, the proposed protections, which rely on existing international and state regulations, replicate states' rights to maintain control over Indigenous creations. Additionally, while UNDRIP has introduced components of human rights and property ownership to TCE determinations, the declaration remains controversial since, as an IP tool, it encourages the formal documentation and commercialization of culture. For many Indigenous communities, commercialization, or even public exposure to what is considered community knowledge, is not an ideal or respectful means of protecting traditions.

Despite the above concerns, beyond state regulations, international TCE policy encourage local response from Indigenous communities. The last two decades in the USA have seen a dramatic increase in the formalization of tribal cultural property laws framed in human rights language (Riley, 2022). In these, tribes employ a combination of international, federal, and tribal laws to protect their cultural heritage and promote their sovereignty (Riley, 2022). These laws address the discrepancy between the Western IP system and the ways in which Indigenous communities perceive and protect their cultural practices and knowledge.

Indigenous instruments to protect cultural and intellectual creations

USA

One of the major difficulties in TCE policy applications within Indigenous contexts emerges from the discrepancy between Western notions of intellectual property and knowledge and Indigenous concepts of property and perceptions of knowledge. Across Indigenous scholarship in North America, the notion of *ways of knowing* is prominent, since it situates practices of knowledge creation, sharing, and stewarding as distinct from represented knowledge (Charles, 2022; Henderson and Bear, 2021; Littletree et al., 2020; Pepion, 2020). These practices are context-dependent and can be misrepresented when reduced into a category of culture/art/craft under TCE. For instance, the basket-weaving tradition, common to North American tribal communities, exemplifies these differences. As cultural objects, baskets garner protection under the TCE category; they are both "craft" products and "art" activities, and communities may benefit from selling them or patenting their designs. From the perspective of tribal basket weavers, basket making is more than "art" or "craft" that is intimately linked to preserving community history, identity, and, most importantly, land stewardship (Kallenbach, 2009; Karuk Tribe, 2015). Basket weavers employ a variety of natural materials, ranging from roots, fibers, bark shorts, and stems to herbs and grasses, depending on the geographical location and climate (Pfeiffer and Huerta Ortiz, 2007). Protection of native plants is essential for this practice, as is caring for their historical locations, traditional gathering practices, and preparation. Most important are the stories associated with the plants that are often preserved as songs or retold during ceremonial gatherings—events intended to renew relationships with the land, cultural heritage, and community members (Hardison, 2005; Kimmerer, 2013). Protection of knowledge-sharing and events preserved through the basketweaving tradition are integral to community longevity. Given this fact, it is not uncommon for tribes to identify basketweaving as foundational to tribal identity (Native American Rights Fund, 2018; Palapala Kulike O Ka ʻAha Pono Paoakalani Declaration, 2003).

The Tulalip Cultural Heritage Protection Act, presented to the 14th session of WIPO IGC, sheds light on how to address discrepancies between Western and Indigenous notions of property and knowledge. The act is composed of tribal codes and customary laws and evokes principles codified in UNDRIP, while seeking to regulate cultural property internally within the tribe, and externally when used by outside entities. Internal regulations specify opportunities and limitations for TCE's use for commercial purposes. For example, some TCE-related knowledge may be incorporated into derivative works. For external use, the act applies contract law and tribal terminology to regulate ownership, control, and the sharing of knowledge, in ways that are "consistent [with] Tribal traditions" and understandings of property (United Nations World Intellectual Property Organization, 2009). The act evokes UNDRIP principles as a foundation for the Tulalip Tribes' inherent right to cultural and intellectual heritage.

Another example of Indigenous norms focused on protecting TCE is the Protocol on Karuk Tribe's Intellectual Property Rights (2014), a soft regulation of the Karuk Tribe intended to guide research. Within this protocol, the Karuk assert their sovereign right over all cultural and intellectual creations as "primary legal and cultural custodians." The tribe asserts their right to free, prior, and informed consent, and while it does not seek to commercialize cultural heritage, in the case of partnerships, it retains proprietary rights over traditional knowledge, culture, and natural resources. Similar to the Tulalip, the Karuk have advocated for their rights at the state, federal and international level (Native American Rights Fund, 2024; Tulalip Tribes Natural Resources Department).

Indigenous communities with less formalized systems of governance, especially tribal entities seeking recognition, Native Hawaiians, and Alaska Natives, may use administrative mechanisms, activism, and alliances to codify their rights to cultural heritage. An example of TCE advocacy can be seen in the Palapala Kulike O Ka ʻAha Pono Paoakalani Declaration, ratified in 2003 at the Native Hawaiian Intellectual Property Conference, to formalize the protection of cultural heritage. The Declaration was introduced to the delegates of the UN Permanent Forum on Indigenous Issues in 2004 (United Nations Permanent Forum on Indigenous Issues, 2004) and brought forth to the Hawaiian government in 2016 (Hawaii Department of Land and Natural Resources, 2016). It defines TCE components of Native Hawaiians as ranging from histories and traditions to sacred ceremonies, images and sounds, and all entities that communities deem sacred (para. 11). It recognizes knowledge as dynamic, "deeply personal and spiritual," and expressed in oral modes and records (para. 13).

The declaration affirms the rights and responsibilities of Native Hawaiians to act as "guardians of culture and land," to defend their cultural expressions from commercialization, and to protect the land from

bio-prospering (Palapala Kulike O Ka ‘Aha Pono Paoakalani Declaration, 2003). It affirms their rights as “inherent owners and guardians” of knowledge and beneficiaries of the privileges granted by intellectual property (para. 15). The declaration reaffirms Native Hawaiian rights of self-determination and the right to share knowledge on their own terms (para. 4), and the right to employ jurisdiction over their knowledge (para. 8). These practices include developing a system of protection (para. 22.2); advocating for policies that ensure equitable benefits (para. 22.3); and education (para. 22.4). Also included is the right to impose a moratorium on scientific practices, especially those that would seek to patent living beings, and a mandate that Native Hawaiians must consent prior to research focusing on Hawaiian bio-resources (paras 17–21).

The declaration also asserts that Native Hawaiians have the right to promote their culture and knowledge using values of *pono* (living in harmony with the world), *Aloha ‘āina* (love of the land), and ‘*āina* (to care for and honor the land) (para. 2). These cultural principles are foundational to the Native Hawaiian worldview (para. 7), where knowledge is “inseparable” from that worldview, whether employed in traditional or contemporary practices (para. 14). Native Hawaiian communal and political identity is embodied in and manifests itself in “traditional and contemporary artforms and cultural expressions” (para. 10) that, in turn, are “maintained” through family- or community-centered acts that ground and express the Native Hawaiian worldview (para. 5, 10).

New Zealand

As with tribal communities in North America, the Māori of New Zealand may not equitably benefit from intellectual property regulations that are proposed to protect their cultural property and traditional cultural expressions. The current system of ownership and protection through trademarks, copyright, and patents fails to account for the specific worldview that Māori hold and apply to traditional cultural expressions.

For Māori, traditional knowledge, knowledge systems, cultural expressions, and intellectual property or *Mātauranga Māori* (sourced from the root word ‘*matau’* to know) encompass all knowledge. All manifestations of, for example, *te reo Māori, tikanga, kawa,* cosmology, mythology, nature, social units and organizations, material culture, and technical skill, also encompass development. This includes knowledge such as arts, medicine (*rongoa Māori*), oral tradition, religion, philosophy, language, law, bodies, biodiversity, and their corresponding physical expressions. Tangible objects such as flora and fauna, as well as intangible objects such as *moteatea* and *waiata,* are also included. Māori do not make a distinction between tangible and intangible; traditional knowledge is considered part of an interconnected whole, which is consistent with the Māori worldview and *whakapapa*. Māori values of caring for cultural knowledge, *taonga* (treasure), include *rangatiratanga* (spirit), *whakapapa* (genealogy), *mauri* (life force), and *kaitiakitanga* (guardianship) (Frankel and McLay, 2002).

For the Māori, knowledge and traditional cultural expressions are “owned” by a collective that is intergenerational and transcends time—*a taonga tuku iho*. This collective ownership bestows both rights and responsibilities. For instance, the composition of a specific traditional song *waiata* to reflect a significant event will be “owned” and its use protected by the *iwi* who composed it. With this also comes a responsibility to use that *waiata* only when appropriate. If this is not observed, an imbalance will surface and require an action for rebalance. There is no applicable provision for collective knowledge in the current national legislation to restore balance at the community level, given its emphasis on individual ownership.

Tikanga Māori (customary law) provides the framework to regulate and protect the control of traditional knowledge, traditional cultural expressions, or *matauranga*. For example, the *matauranga* related to a haka composed for a particular battle would be vested with the *mana* (spiritual essence) and associated with that *mana* set of principles, or *tapu*, of the particular community (*hapu*) who composed that song (Barclay, 2015). Similarly, the *matauranga* related to the use of a particular plant for healing cuts and grazes would be vested in the *hapu* who held that *matauranga*. *Mana* and *tapu* would act as regulators, securing their right to use that *matauranga* while also imparting responsibility to protect that *matauranga*. These regulators articulate the principles for how and when the *matauranga* will be used. Some *matauranga* or traditional knowledge is common to Māori in general, while other knowledge is *hapu*-based. Knowledge sharing creates a relationship between knowledge holders and recipients, and the knowledge’s origin dictates its ownership. Based on the principle of reciprocity, knowledge recipients are expected to repay the gift of knowledge. Despite this recognized Indigenous traditional knowledge system, misappropriation of traditional knowledge and traditional cultural expressions still occur.

The 1993 Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples is an example of the Māori advocacy. Passed by the

Plenary of the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples convened by nine New Zealand tribes, it reaffirms Māori rights to their cultural and intellectual creations (Taiuru, 2020). Constructed in response to the international Indigenous rights movement and the UN development of policies related to Indigenous knowledge, the Mataatua Declaration asserts the rights of Indigenous communities to act as "guardians" in all matters related to protecting their knowledge and controlling its access (United Nations Commission on Human Rights, 1993). Within these communities, a guardian is appointed to protect knowledge and share it according to community norms (McCauley, 2008). Thus, a library must first establish a relationship with the community guardian to appropriately manage Māori TCE.

Mexico

Contemporary *barro* (clay) artisans in Santa María Atzompa, Mexico, are the knowledge bearers of a craft tradition that dates back at least 1400 years (INAH, no date). The community, comprising Zapotec, Mixtec, Mixe, Mazatec, and Spanish language speakers, are the descendants of early Zapotec founders and later migratory settlements (Data Mexico, 2024). As evidenced from artifacts and kilns recovered at the Atzompa archaeological site, modern crafters maintain techniques and skills that recall those of their predecessors. In later centuries, they have been known for the traditional green pottery commonly used in Oaxaca, the preservation of which is testament to the continued importance of traditional knowledge within the community.

In the barro tradition, knowledge is defined by the ability to gather and process materials for pottery, the skills required to create both traditional and unique pieces, and the capacity to sustain the craft for future generations. In the initial stages, knowledge of the material environment and local geography is evident in the labor of those who gather and transport clay. These laborers know where ideal clay deposits are located and know how to collect them without depleting the natural resource. For instance, they know how to collect clay from cliff edges or under trees without risking injury from landslides or hindering continued foliage growth (Doen Oaxaca, 2022).

At the secondary stage, the laborers' knowledge is evident in the blending of moist and pulverized clay to make a workable substance, and in their ability to create pottery pieces on a handspun wheel. This involves forming the base, sides, and upper lip while wet; allowing for drying before an applique is added; and the double-firing process that allows for the addition of colored glaze. Because kilns are placed outside in a non-controlled environment, knowledge of climatic conditions is essential. During the rainy season (May through November), the ability to anticipate rain is essential, as firing and cooling need drier conditions.

Knowledge is most importantly defined in the continuity of the *barro* tradition, in the skill of experienced crafters who teach younger generations where to gather clay and how to work from raw materials. While engaged in conversation with a *barro* crafter, evidence of a distinct worldview may be apparent, with references to a feminine Earth or knowledge about sickness or disease.

In Santa María Atzompa, the *barro* tradition is generally passed from parent to child, although some artisans learn as apprentices to others. Individual families often specialize in specific *barro* pieces (bakeware, pitchers, serving dishes, or decorative art), with children learning to create pieces at an early age and becoming proficient in early adulthood. This knowledge is, for all intents and purposes, owned by elders and taught to younger generations.

Modern Atzompa *talleres* (workshops) are populated with artisans who create traditional green pottery and unique decorative pieces. Historically, male community members were responsible for gathering clay from the surrounding area, transporting it to the *taller*, initially processing the clay (breaking pieces into workable clay or pulverizing dry clay into powder), and for the baking stages. Women were clay artisans, shaping the material into pots, vases, statuettes, and decorations. This gender specificity is not always present in contemporary *talleres*; females might also collect clay and male artisans are now more common, meaning there is less role specificity and a larger shared knowledge of the *barro* process from start to finish.

Outside of the household *taller*, minimal and formal community-based organization exists. In Santa María Atzompa, there is a collective of artisans, some of whom are members, but they are not a formal organization intended to regulate, preserve, maintain records, or work to legally protect the *barro* tradition. There also is a Community Museum associated with the Atzompa archaeological site and sponsored by INAH, the National Museum of Anthropology. Its mission includes spreading knowledge about the ancient Zapotecs; protecting and conserving the archaeological site; and linking the ancient pottery tradition to the modern, principal economic activity of Santa María Atzompa. Within its walls are artifacts from the archaeological site, but there is presently no

collection of modern pieces intended to display recent developments in the artform. Contemporary artisans produce what is considered "popular art" to sell, and such pieces are not copywritten or protected as original works. This leaves vulnerable the green pottery tradition from Santa María Atzompa, as it can be duplicated without reference to its place of origin or crafters.

Given the international recognition that traditional knowledge warrants protection, and specifically under UNDRIP Article 31, Mexico is late to the game of legislation for indigenous folk and craft traditions. The Federal Law for the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Population and Communities (LFPPCPCIA) places the burden of proof on Indigenous communities that may lack legal representation or knowledge of trademark/copyright processes or agreements executed before the National Institute of Indigenous Peoples (Gobierno de Mexico, 2022). Textile designs are especially susceptible to infringement, as large corporations duplicate Indigenous patterns that have historically identified their wearers with their communities (France, 2022). If something as specific as a textile border can undergo duplication, how difficult might it be for more fluid *barro* artisans, whose craft both incorporates ancient techniques and displays contemporary modifications, to protect their knowledge traditions?

Findings

The above analysis suggests that the WIPO mechanism proposed to protect TCE Indigenous creations does not respond to the needs and realities of Indigenous communities highlighted in this study, that it serves as a mechanism chiefly advancing the interests of states. The discrepancy between the IP-based concept of knowledge used in the WIPO text negotiations and those applied in Indigenous communities further suggests that this mechanism replicates the state's rights to maintain control over Indigenous creativities. In cases when specific ideas or meanings associated with collective ownership have been imported from specific Indigenous groups, they are devoid of its cultural and historical contexts and linguistics roots, which loses their original intent and application. Additionally, and despite the WIPO's intentions to emphasize the significance of diverse Indigenous insights, there have been no substantive changes in how the modalities of UN forums operate. In these negotiations, Indigenous politicians have participated as observers, with no power to vote or veto the decisions of the governments (UN WIPO, 2011; UN WIPO, 2023).

Given the timing, this study serves as a warning to the cultural institutions currently in possession of Indigenous materials and/or those acting as custodians, especially state entities. The solidification of TCE into law may have far-reaching effects favoring further appropriation of Indigenous creativities, especially those that are financially successful. In response to these findings, the second part drafts some solutions an institution may adopt to support Indigenous rights even if the law changes. This suggests that for some non-Indigenous institutions, it may be possible to protect Indigenous intellectual property rights by applying professional guidelines, institutional policies, and responsible practices.

Culturally sensitive collection management and legal considerations

The second part of this study investigates the role of cultural institutions and libraries, specifically in supporting the protection of Indigenous cultural works falling under the TCE category. The researcher of this study argues that cultural institutions may respond to Indigenous communities' needs and function as supporting entities and partners through an examination of protocols libraries and individual institutions may adopt to care for Indigenous collections.

Library protocols and practices to protect Indigenous collections

Culturally sensitive and/or responsive collection management practices prioritize source communities' interests and norms over institutionalized standards, and, in some cases, over laws. Two major professional tools guide the implementation of such practices: the Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services, adopted by the Australian Library and Information Association (1995); and the Protocols for Native American Archival Materials, composed by a group of US-based Indigenous professionals in 2006, which was recently endorsed by the Society of American Archivists (2018) and the Association of College and Research Libraries (2020). While state-specific, these instruments are founded in human rights regulations protecting Indigenous sovereignty, which have guided practices in Canada and in New Zealand. Protocols developed to care for Indigenous properties can guide partnerships and the co-management of collections, and facilities may be able to advocate within their library, museum, archival, and cultural center communities for association-wide regulations. While the implementation of these

instruments remains somewhat novel for library and archival communities—as their adaptation is sporadic—they offer solutions to address the misappropriation and misuse of Indigenous knowledge.

Literature supporting the value of culturally-sensitive Indigenous collection management is multifaceted and well-examined elsewhere; Library Trends 2023 special issue on Indigenous Librarianship is a recent contribution in this area. Studies emphasizing the significance of applying these protocols underscore their role in protecting Indigenous rights (Anderson, 2024; Garwood-Houng and Blackburn, 2014; Thorpe et al., 2021; Underhill, 2006). Reports of partnerships between cultural institutions and Indigenous communities further support the importance of culturally sensitive collection management for the protection of Indigenous rights to TCE (Bell, 2017; Christen, 2011; Geismar, 2018). The following US-based cases merit a review.

Culturally sensitive collection management practices

USA: American Philosophical Society and Newberry. The Center for Native American and Indigenous Research (APS CNAIR) of the American Philosophical Society has co-managed its collections with Indigenous partners since its inception in 2014. The APS, founded in 1743, was the first library of the US government and some of its earliest collections are reflective of the colonial period and its prevailing mindset. Nevertheless, in recent decades, the APS has worked to build partnerships with over 80 Indigenous communities whose cultural materials they hold. These partnerships allow for the collaborative description and representation of content, protection of culturally sensitive content, and control of access. This work has evolved into an institutional set of management regulations, the CNAIR Protocols for the Treatment of Indigenous Materials, guided by the Protocols for Native American Archival Materials (PNAAM) principles and norms (Carpenter, 2019).

The CNAIR Protocols formalize the APS's objective to co-steward Indigenous collections in partnership with representatives from Indigenous communities. These protocols engage members of these communities on equal terms to determine the proper handling of materials and honor source community requests (Article 1 C; Article 2, B). At the same time, APS CNAIR also responds to its institutional priorities and mission (Carpenter, 2019; Powell, 2014). This dual approach guides access to and the preservation of materials that fall under the culturally sensitive category. The CNAIR Protocols highlight treatment of culturally sensitive content, or materials that have religious and/or spiritual significance (Article 3 C), like the Isleta paintings or photographs of Iroquois masks. These materials "may be viewed by any person with a legitimate need within the APS library"; reproduction and/or publishing of these materials may only be done with "the consent the representatives of the tribe from which the materials originate" (Article 5 C). The ruling also guides the preservation of sensitive content (Article 6).

The APS CNAIR protocols have inspired other institutions that hold Indigenous collections and seek guidance on best practices of co-stewardship, such as the Newberry Library in Chicago. The Newberry Library collections of Indigenous materials also originated alongside the enforced assimilation and acculturation of Native peoples. The American Indian and Indigenous Studies collection accounts for about 130,000 volumes, over 1 million manuscript pages, 2000 maps, 500 atlases, 11,000 photographs, and 3500 drawings (Hansen and López, 2024). Today, the library is building relationships with Indigenous source communities to overcome structural barriers and apply ethical practices in collection descriptions, access, and acquisitions. It prioritizes Indigenous perspectives in its collection management according to PNAAM norms and seeks advice from source communities on the historical or sensitive identification of materials and their proper handling (Newberry Library, 2021). The library consults directly with Indigenous representatives to determine the sensitivity of content and proper management. To prevent outsiders from viewing these sensitive materials, library staff identify them with physical flags, add notes in catalog records, and document finding aids. While flagging may not prevent users from accessing the content, the library does not digitize these materials or place them online (Hansen and López, 2023). Most recently, Newberry librarians have begun applying Traditional Knowledge labels in catalog records; as of fall 2024, two items have been labeled (Hansen and López, 2024). The intention is to help source communities exercise their rights to manage their creations according to Indigenous norms and guidelines.

At the Newberry Library, priority in acquisition is given to materials "endorsed by American Indian, Alaska Native, or Native Hawaiian people in the USA, as well as other people of Indigenous heritage throughout the Americas" (Newberry Library, cited in Hansen and López, 2023). The library policy includes a non-collective approach, meaning that they refrain from acquiring materials whose proper place is in tribal and Indigenous archives. All potential donations require a consultation with a tribal archivist or historical preservation officer before a library can

accept Indigenous materials (Hansen and López, 2023). The library also refrains from intentionally acquiring materials created without the consent of source communities (i.e. by fieldwork or anthropologists) and does not endorse the intellectual property rights of authors of such works.

New Zealand: Tauranga city libraries. New Zealand professionals face a slightly different situation in comparison with their US-based colleagues. New Zealand's Māori representation in Parliament is comparatively greater than Indigenous representation in the USA. Library sites are bilingual, utilizing English and Māori, and Māori subject headings are employed in cataloging materials. Māori terminology is also included alongside English in formal documents. The state government even strives to include Māori voices in international negotiations related to Indigenous traditional knowledge (Wright and Robinson, 2024). These attributes and developments might establish a stronger position for Māori communities to help meet challenges in the future.

In light of the principles and norms of the Mataatua Declaration, the work of the Tauranga City Libraries helps identify best practices of collections management. Since the 1990s, the Tauranga system, which includes Tauranga City, Greeton, Papamoa, and Mount libraries, has invested in relationship-building with local Māori communities (McCauley, 2008). In 2007, a professional development program, Māori cadetship, was introduced to help staff implement Māori values in their institutional work. Māori Services Librarians worked on tasks related to collection management and assisted with the preparation of grievance cases, as part of the Waitangi Tribunal claims process. This work helped local Māori workers become familiar with the collections and the library itself (Smith, 2005).

Encouraged by the Tauranga City Council, the Tauranga City Libraries also built relationships with local Māori language schools, introducing mobile library visits at some of them while encouraging thematic programming (McCauley, 2008). Today, these libraries apply Māori legal norms and guidelines—*tikanga Māori*—and tribal boundaries to the description, organization, and management of the materials. In so doing, librarians recognize the rights to intellectual and cultural creations of the local Māori communities (i.e. a specific clan, or a decedent group) and identify a proper intellectual property owner for specific items in the collection (Banks, 2023). If the collection contains sensitive knowledge, a potential user is able to follow the community's set of norms related to accessing the item (despite a widespread principle of open access). Users and staff are guided in the proper interpretation of materials, placing them in the historical and cultural settings of the source community. They also know who to contact to regulate access and handle preservation.

The degree to which this work occurs in other New Zealand libraries is a topic for future investigation. A recent analysis of the policies of five leading New Zealand libraries suggests that, despite the goals of library administration to manage collections holistically, Māori principles of knowledge preservation are not present in the majority of the libraries' collection management practices (Banks, 2023).

Mexico: The National Institute of Anthropology and History. As is evident in the 1939 establishment of the National Institute of Anthropology and History (INAH), there has been a long-standing interest in preserving Mexico's ancient and contemporary heritage. The INAH is dedicated to promoting Mexico's paleontological, archaeological, and historical past while researching and protecting contemporary Mexican traditions. Since its inception, the INAH, a Mexican federal government bureau, has been integral to the establishment and maintenance of museum projects in Mexico. Along with the National Fund for Culture and the Arts, INAH is a subsidiary of the Secretariat of Culture (formerly the National Council for Culture and Arts), which is responsible for protecting and promoting the arts and managing Mexico's national archives.

Despite institutions and laws that superficially touch on the cultural preservation of Indigenous and Afro-Mexican productions (including the Federal Copyright Law; the General Law of Culture and Cultural Rights; the Federal Law on Monuments and Archaeological, Artistic and Historical Zones; the Federal Law for Protection of Industrial Property; the Federal Civil Code; the Federal Code of Civil Procedures; the Commerce Code; and the Federal Law of Administrative Procedure), the first Mexican legislation to specifically address protection of traditional cultural expressions was the Federal Law for the Protection of Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities (2022), hereafter referred to as LFPPCPCIA. The LFPPCPCIA defines cultural heritage based on the framework established in the UNESCO Convention on the Protection of World Cultural and Natural Heritage. It acknowledges collective intellectual property, recognizing Indigenous and Afro-Mexican communities as its rightful owners. The law is intended to name Indigenous and Afro-Mexican communities as self-determining and autonomous authorities over

their expressions, preservation, control, and continued development, and grants them authority to define their use and, where applicable, their exploitation by third parties (Schmidt, 2021).

The LFPPCPCIA established a system to protect TCE as well as a protocol for its regulatory enforcement. It identified sanctions for the reproduction, misappropriation, exploitation, and commercialization of TCE when community-informed consent has not been granted. The LFPPCPCIA disallows the establishment of contracts with third parties by individual community members without the community's explicit consent. Disputes can be handled through complaint, mediation, or criminal lawsuits, with the Mexican Copyright Institute serving as the final authority for mediation or criminal lawsuits. A general interpretation of LFPPCPCIA recognizes other Mexican laws related to intellectual property rights, copyright, and Indigenous rights.

Despite good intentions, some complexities in LFPPCPCIA's application indicate its insufficiency as a stand-alone protection for Indigenous and Afro-Mexican TCE. Ambiguity in the law's verbiage, with express terminology remaining undefined, render its interpretations and resulting application variable (Santamaria Hernández, 2023). The General Law of Consultation of Indigenous and Afro-Mexican Peoples and Communities, upon which the LFPPCPCIA relies, has yet to be passed. The path for Indigenous and Afro-Mexican communities to register TCE requires submission to the National Institute of Indigenous Peoples and the National Registry of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities. Registration also requires community volition and some degree of legal representation, and enforcing LFPPCPCIA requires funding at various levels that has not been allocated to the National Copyright Institute or National Institute of Indigenous Peoples. For traditional expressions that may be shared between two or more communities, the legitimacy of custodianship is not addressed.

Furthermore, Atzompa artisans face additional two complexities. The first involves contemporary additions to traditional *barro* techniques and materials, or the remixing of knowledge. In recent decades (1970s to the present), variations in color and style have been incorporated into the Atzompa craft tradition; some artisans use clay from external sources, particularly in fine applique work. The LFPPCPCIA does not address the "mixing or remixing of knowledge" that generates "partially 'traditional' or 'modern' knowledge." Santamaria Hernández (2023) contends that it is "unclear if the objective of the protection system to contribute to new uses includes the generation of mixed knowledge, but if something like that happens, there is no clarity about its treatment" (373). This point is crucial. Traditional green pottery has a long history, which would render it plausibly admissible in the National Register. Subsequent creative manifestations, however, rely on ancient techniques but introduce new artistic twists. These innovations might be harder to claim, thus leaving their artisans without proof of ownership and/or the pieces without recognition as traditional cultural expressions. Second, as mentioned above, Atzompa *barro* is a popular art, sold from *talleres*, on street corners, at *mercados*, and at cultural events. Individual artisans contract with third-party vendors to sell their creations. Even though this practice is well-established, when considered from a legal perspective, the necessity of community agreement could negate artisans' ability to negotiate their own business contracts. In this case, the application for LFPPCPIA protection would need to address these tensions in any legislation to ensure that Atzompa crafters are protected.

The case studies provided in this section exemplify progress at the state level as well as the vulnerabilities in current legislation to protect Indigenous TCE. Even without considering financial obligations (not addressed in this article), Indigenous communities face legal, organizational, and information challenges in pursuing protections. This is where museums, libraries, archival facilities, and professional associations can provide assistance.

Conclusion

This article's exploration of legal developments and professional practices suggests that current international developments have been instrumental in recognizing the intellectual property rights of Indigenous communities, but their effectiveness remains uncertain. Existing national intellectual property frameworks often do not align with Indigenous understandings of knowledge creation, dissemination, and preservation. Contemporary efforts to co-manage Indigenous collections reflect a recognition of the need to honor the rights and perspectives of such communities. The best practices introduced in this article demonstrate how to integrate Indigenous cultural values and rights into library management, thereby enhancing community engagement and respect for traditional knowledge.

This study also suggests that cultural and information institutions can and must support the rights of Indigenous communities and collaborate with them

to set policies and guide practices. When Indigenous voices are absent from policymaking, legal developments can hinder community work and create additional difficulties for the protection of Indigenous cultural and intellectual practices.

At the same time, state-focused implementation of protocols and practices supporting Indigenous values and/or responding to source communities' protocols and norms faces multiple challenges. As demonstrated in the cases from the USA, funding for partnerships with Indigenous communities remains grant-based, leading to irregularities in partnership management and relationship building in some institutions, while making the practice impossible for others facing budgetary constraints (Bartley, 2023; Association of Tribal Archives, Libraries and Museums, 2021). Additionally, lack of training and experience may negatively affect the management of Indigenous collections by non-Indigenous entities (Anderson, 2024) alongside discrepancies between institutional and tribal priorities (Gosart et al., 2023).

The authors hope that this work will encourage more scholarship on collaborations between information institutions and the Indigenous communities they desire to support. Case studies surveying individual communities' practices and protocols of caring for TCE objects and traditional knowledge can inform scholarly, professional, and legal efforts and institutions. Additional scholarship examining experiences and best practices of co-management of Indigenous collections located in non-Indigenous institutions can help to educate professionals and encourage relationships with Indigenous source communities.

Declaration of conflicting interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors received no financial support for the research, authorship, and/or publication of this article.

ORCID iD

Ulia Gosart https://orcid.org/0000-0003-0042-3954

References

Anderson K (2024) Factors associated with the implementation of the protocols for native American archival materials: An exploratory study. *Journal of Contemporary Archival Studies* 11(1): 1–36.

Association of Tribal Archives, Libraries, and Museums (2021) *Sustaining and advancing Indigenous cultures. Field surveys and summits*. ATALM Conference publication.

Banks K (2023) Ngā Matatiki Mātauranga: Tikanga, policies and libraries. *The Serials Librarian* 84(5–8): 103–118.

Barclay B (2015) *Our Own Image: a Story of a Māori Filmmaker*. Minneapolis, MN: University of Minnesota Press.

Bartley F (2023) Implementing Indigenous approaches to knowledge and knowing at the John Hay library: A pueblo reflection. *Library Trends* 72(1): 70–89.

Bell JA (2017) A bundle of relations: Collections, collecting, and communities. *Annual Review of Anthropology* 46(1): 241–259.

Carpenter B (2019) *Archival initiatives for the indigenous collections at the American Philosophical Society.* Available at: https://www.amphilsoc.org/sites/default/files/2020-10/attachments/Case_1_Archival_Initiatives_for_Indiginous_Collections.pdf (Accessed: 27 November 2024).

Charles B (2022) Oral traditions of the Woodland Cree (Nihithawak) in Northern Saskatchewan: Links to cultural identity, ways of knowing, language revitalization, and connections to the land. *Northern Review* 53: 25–37.

Christen K (2011) Opening archives: Respectful repatriation. *The American Archivist* 74(1): 185–210.

Data Mexico (2024) *Santa María Atzompa Municipality*. Available at: https://www.economia.gob.mx/dataMexico/es/profile/geo/santa-maria-atzompa (Accessed: 26 October 2024).

Doen O (2022) *De me tierra artesanías: Las minas de Barro en Atzompa.* Available at: https://youtu.be/0CkQsc3-WU0?si=aMuPa1abUhaLu-LE (accessed 25 October 2024).

France 24 (2022) *Mexico we*aves fashion policy to help Indigenous communities. Available at: https://www.france24.com/en/live-news/20221118-Mexico-weaves-fashion-policy-to help-indigenous-communities (accessed 26 October 2024).

Frankel S and McLay G (2002) *Intellectual Property in New Zealand*. London, UK: LexisNexis Butterworths.

Garwood-Houng A and Blackburn F (2014) The ATSILIRN protocols: A twenty-first century guide to appropriate library services for and about aboriginal and torres strait islander peoples. *The Australian Library Journal* 63(1): 4–15.

Geismar H (2018) *Museum object lessons for the digital age*. London, UK: UCL Press.

Gobierno de M (2022) *Law for the protection of the cultural heritage of Indigenous and Afro-Mexican peoples and commu*nities. Available at: NA14-Cultural_patrimony_2023_eng_web.pdf (accessed 26 October 2024).

Gordon V (2013) Appropriation without representation-the limited role of indigenous groups in WIPO'S intergovernmental committee on intellectual property and genetic resources, traditional knowledge, and folklore. *Vanderbilt Journal of Entertainment and Technology Law* 16(3): 629–667.

Gosart J (2013) *The Protection of the Traditional Knowledge of Indigenous Peoples. PhD thesis*. Los Angeles, CA: University of California.

Gosart U, Kinnally L and Sprouse R (2023) Protecting Indigenous music in the public domains: HathiTrust digital library case study. *Collection Management* 48(2): 69–83.

Gosart U and Wendland W (2023) Indigenous intellectual property rights: An Interview with Wend Wendland. *The Serials Librarian*. https://doi.org/10.1080/0361526X.2023.2235758.

Graber C (2010) Institutionalization of creativity in traditional societies and in international trade law. IT-ICH i-call Working Paper No. 01. University of Luzern. Lucerne, 643–672.

Hansen W and López A (2023) Oknoma Nikan Tinemih: Improving inclusive access to the Indigenous studies collections at the Newberry Library. *Library Trends* 72(1): 48–69.

Hansen W and López A (2024) *Indigenous Librarianship Webinar [Webinar]*. Webinar: Library Trends.

Hardison P (2005) Commentary: Traditional knowledge studies and the Indigenous trust. *Practicing Anthropology* 27(1): 42–45.

Hawaii Department of Land and Natural Resources Aha Moku Advisory Committee (2016) *Final rules of practice and procedure*. Available at: https://luc.hawaii.gov/wp-content/uploads/2019/06/Aha-Moku_HAR_10-2016.pdf (accessed 27 November 2024).

Henderson S and Little Bear L (2021) Coming home: A journey through the trans-systematic knowledge systems. *Engaged Scholar Journal: Community-Engaged Research, Teaching, and Learning* 7(1): 205–216.

Herlihy C (2024) Protecting traditional transnational cultural expressions in the United States and México. *Case Western Reserve Journal of International Law* 56(1): 569–590.

INAH (no date) *LUGARES | Atzompa*. Available at: https://lugares.inah.gob.mx/en/zona-arqueologicas/zonas/1757atzompa.html?lugar_id=1757 (accessed 26 October 2024).

Janke T, Curtis L, Goulding P, et al. (2021) *Comparative study of existing Genetic Resources (GR), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) legislation and approaches with recommendations for best practice model national policies and laws.* Available at https://www.taeclaos.org/wp-content/uploads/2022/02/Comparative-Study-TK-TCE-GRTKTCE-Oma-Case-Study-Laos.pdf (accessed 27 November 2024).

Jones N (2024) *Self-determination as Voice: The Participation of Indigenous Peoples in International Governance*. Cambridge, UK: Cambridge University Press.

Kallenbach E (2009) The California Indian basketweavers association: Advocates for the use of museum collections by contemporary weavers. *Museum Anthropology Review* 3(1): 1–13.

KapaKingi E (2020) Kia Tāwharautia Te Mātauranga Māori: Decolonising the intellectual property regime in Aotearoa New Zealand. *Victoria University of Wellington Law Review* 51(4).

Karuk Tribe (2015) *Protocol on Karuk Tribe's Intellectual Property Rights Research, Publication and Recordings.* Available at: https://sipnuuk.karuk.us/system/files/atoms/file/ATALM17_KTResearchProtocol.pdf (accessed 27 November 2024).

Kimmerer R (2013) *Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge and the Teachings of Plants*. Minneapolis, MN: Milkweed Editions.

Littletree S, Belarde-Lewis M and Duarte M (2020) Centering relationality: A conceptual model to advance indigenous knowledge organization practices. *KO Knowledge Organization* 47(5): 410–426.

Maui S (2017) An indigenous perspective on the WIPO IGC. In: *Protecting traditional knowledge*. Routledge, pp. 219–229.

McCauley D (2008) *Tauranga city libraries: Meeting the needs of local iwi? Biculturalism and Māori cultural intellectual property.* Available at: https://debbiemccauleyauthor.wordpress.com/essays/tauranga-city-libraries-meeting-the-needs-of-local-iwi-biculturalism-and-maori-cultural-intellectual-property/https://debbiemccauleyauthor.wordpress.com/about/ (accessed 27 November 2024).

Mead A (2002) *Understanding Māori intellectual property r*ights. Available at: https://perma.cc/74LL-SGE2 (accessed 12 March 2025).

Morse B (2012) Indigenous human rights and knowledge in archives, museums, and libraries: Some international perspectives with specific reference to New Zealand and Canada. *Archival Science* 12: 113–140.

Native American Rights Fund (2018) Karuk Tribe Intellectual Property Rights. Available at: https://www.youtube.com/watch?v=HfHpBRNOZgM&t=1 s (accessed 27 November 2024).

Native American Rights Fund (2024) World Intellectual Property Organization Negotiations. Available at: https://narf.org/cases/wipo/#:~:text=The%20Karuk%20Tribe%20has%20developed,Knowledge%20and%20Traditional%20Cultural%20Expressions (accessed 27 November 2024).

Newberry Library (2021) *Access to culturally sensitive Indigenous materials in the Newberry library collections.* Available at: https://www.newberry.org/uploads/files/Culturally_Sensitive_Indigenous_Materials.pdf (accessed 27 November 2024).

New Zealand Ministry of Business, Innovation & Employment (2016) *Protecting intellectual property with a Māori Cultural Element User Guide*. Available at: https://www.iponz.govt.nz/assets/pdf/maori-ip/protecting-ip-with-a-maori-cultural-element.pdf (accessed 27 November 2024).

Ornstein E (2023) Indigenous knowledge as evidence in federal rule-making. *University of Miami Law Review* 78: 409–431.

Palapala Kulike O Ka 'Aha Pono Paoakalani Declaration (2003) Available at: https://papaolalokahi.org/wp-content/uploads/pol-pdf/Paoakalani_Declaration_05_reduced.pdf (accessed 27 November 2024).

Parsley J (1993) Regulation of counterfeit Indian arts and crafts: An analysis of the Indian arts and crafts act of 1990. *American Indian Law Review* 18(2): 487–514.

Pepion D (2020) An introduction to Indigenous ways of knowing: A blackfeet perspective. In: Grayshield L (ed) *Handbook of Indigenous Ways of Knowing in Counseling, Research, Theory and Practice*. New York: Springer, 35–50.

Perlman M (2017) Traditional cultural expressions. In: Robinson D, Abdel-Latif A and Roffe P (eds) *Protecting Traditional Knowledge: The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*. London, UK: Routledge, 173–191.

Pfeiffer J and Ortiz E (2007) Invasive plants impact: California native plants used in traditional basketry. *Fremontia: Journal of California Native Plants Society* 35(1): 7–14.

Powell T (2014) The American philosophical society: Protocols for the treatment of indigenous materials. *Proceedings of the American Philosophical Society* 158(4): 411–420.

Riley A (2005) Straight stealing: Towards an Indigenous system of cultural property protection. *Washington Law Review* 80(1): 69–164.

Riley A (2022) The ascension of Indigenous cultural property law. *Michigan Law Review* 121: 75–146.

Santamaria HE (2023) Mexican Federal law for the protection of cultural heritage of indigenous and afro-Mexican peoples and communities,". *GRUR International* 72(4): 364–375. Available at: https://doi.org/10.1093/grurint/ikac146 (accessed 27 November 2024).

Schmidt L (2021) *New general law for the protection of cultural heritage of Indigenous and Afro-Mexican Peoples and Communities in Mexico*. Available at: https://natllawreview.com/article/new-general-law-protection-cultural-heritage-indigenous-and-afro-mexican-peoples-and (accessed 16 November 2024).

Shrinkhal R (2024) Protection of traditional knowledge (TK) and traditional cultural expressions'(TCEs) of Indigenous peoples: Some reflections. *Sampratyaya* 1(3): 24–33.

Smith S (2005) *These Resources are Yours: How Libraries and Archives in New Zealand in their Support of Research can*

Contribute to Decolonization. Tauranga, New Zealand [self-published].

Taiuru K (2020) Māori data sovereignty with AI, algorithms, IOT and machine learning. Rights afforded to Māori & Crown obligations with legal instruments. Available at https://www.taiuru.co.nz/maori-data-sovereignty-with-ai-algorithms-iot-and-machine-learning-rights-afforded-to-maori-crown-obligations-with-legal-instruments/ (accessed 2 December 2024).

Thorpe K, Christen K, Booker L, et al. (2021) Designing archival information systems through partnerships with Indigenous communities: Developing the Mukurtu hubs and spokes model in Australia. *Australasian Journal of Information Systems* 25: 1–22.

Tulalip Tribes Natural Resources Department (no date) *Indigenous rights*. Available at: https://nr.tulaliptribes.com/Topics/IndigenousRights#:~:text=The%20Tulalip%20Tribes%20has%20also%20contributed%20to%20the%20development%20of,Salish%2Dlike%20baskets%20in%20China (accessed 27 November 2024).

Underhill K (2006) Protocols for native American archival materials. *RBM: A Journal of Rare Books, Manuscripts, and Cultural Heritage* 7(2): 134–145.

UNESCO/WIPO (1982) *Model provisions for national laws on the protection of expressions of folklore against illicit exploitation and other prejudicial actions.* WIPO/GRTKF/IC/3.

United Nations Commission on Human Rights (1993) *The Mataatua declaration on cultural and intellectual property rights of Indigenous peoples.* Available at: https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/mataatua.pdf (accessed 27 November 2024).

United Nations Educational, Scientific and Cultural Organization (2003) *Convention for the safeguarding of the intangible cultural heritage*. Available: https://ich.unesco.org/doc/src/15164-EN.pdf (accessed 27 November 2024).

United Nations General Assembly (2007) *United Nations Declaration on the Rights of Indigenous Peoples*. Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (accessed 1 February 2024).

United Nations Human Rights Council (2024) *Constitutions, laws, legislation, policies, judicial decisions and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration: Study by the Expert Mechanism on the Rights of Indigenous Peoples (2 August 2024)*. Available at: https://documents.un.org/doc/undoc/gen/g24/129/28/pdf/g2412928.pdf (accessed 27 November 2024).

United Nations Permanent Forum on Indigenous Issues (2004) *Collective statement of Kanak*a Maoli Indigenous Hawaiian people of Ka Pae Aina o Hawai' i. Available at: https://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01cf/55cb8050.dir/234_as.pdf (accessed 27 November 2024).

United Nations World Intellectual Property Organization (2001) *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998–1999)*. Geneva: WIPO.

United Nations World Intellectual Property Organization (2009) *WIPO panel on "Indigenous and Local Communities' Concern and Experiences in Promoting, Sustaining and Safeguarding their Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources." Experiences from the United States of America.* Available at https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_14/wipo_grtkf_ic_14_inf_5_a.pdf (accessed 27 November 2024).

United Nations World Intellectual Property Organization (2011) *Note on existing mechanisms for participation of observers in the work of the WIPO IGC*. Available at: https://www.wipo.int/documents/d/igc/docs-en-igc_observer_participation.pdf (accessed 21 May 2025).

United Nations World Intellectual Property Organization (2023) *The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.* Available at https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-2-en-the-wipo-intergovernmental-committee-on-intellectual-property-and-genetic-resources-traditional-knowledge-and-folklore.pdf (accessed 21 May 2024).

US Department of the Interior (no date) *Native American Graves Protection and Repatriation Act*. Available at: https://www.bia.gov/service/nagpra (accessed 13 November 2024).

Wright E and Robinson D (2024) The Patents Māori Advisory Committee of Aotearoa New Zealand: Lessons for Indigenous knowledge protection. *The Journal of World Intellectual Property* 27: 222–241.

Zuddas C and Cocco A (2021) Traditional Cultural Expressions (TCEs), holder communities and conflicts with central states: Policies for the recognition of Intangible Cultural Heritage (ICH) and Intellectual Property (IP) regulation. In: Niglio O and Lee EYJ (eds) *Transcultural Diplomacy and International Law in Heritage Conservation*. Singapore: Springer, 209–228.

Author biographies

Ulia Gosart (Popova) is a scholar, writer and human rights activist. She teaches at the San Jose State University School of Information.

Valmaine Toki is of Ngati Rehua, Ngatiwai, Ngapuhi descent. Valmaine holds a BA LLB (Hons) MBA, LLM and a PhD in law and has a current practicing certificate as a Barrister and Solicitor of the High Court. As a He Ture Pumau scholar Valmaine worked at Te Ohu Kaimoana where she completed her MBA. Valmaine joined Te Piringa after five years lecturing at the Auckland Law School. She is the first New Zealander appointed to the United Nations Permanent Forum on Indigenous Issues where she served two 3 year terms and more recently the first New Zealander appointed by the President of the Human Rights Council to the United Nations Expert Mechanism on the Rights of Indigenous Peoples. Unsurprising Valmaine's area of research, writing and teaching lies within the area of Indigenous rights. She has given public lectures and seminars globally including at Harvard Law School.

Susan Townzen holds a PhD in religion and currently is a student in the MLIS degree program at San Jose State University. Her research interests include the intersection of museum and library policy with the religions and cultures of Mexico.