

Local Practices for Digitization of and Online Access to Indigenous Materials

INTRODUCTION

These *Local Practices for Digitization of and Online Access to Indigenous Materials* (“Indigenous Materials Local Practices”) have been created to facilitate decision-making around digitization and online access to Library-stewarded Indigenous collections within the context of the Library’s Digital Lifecycle Program (DLP).

Background

When making special collections digitization decisions for the DLP, the Library relies on a set of [Responsible Access Workflows](#) to account for law and policy issues—i.e. copyright, contracts, privacy, and ethics. As set forth in the Responsible Access Workflows’ accompanying [Ethics Local Practices](#), the Library’s ethics workflow applies when collection digitization could lead to potential for harm or exploitation of people, resources, or knowledge. When developing those Ethics Local Practices, we recognized *additional* ethics considerations that must be taken into account with regard to Indigenous materials, and that stewardship of Indigenous materials warrants more in-depth internal guidance and external communication with Indigenous communities. Hence, we developed these Indigenous Materials Local Practices.

These Indigenous Materials Local practices accordingly provide: definitions of key terms (Article II), a process by which Indigenous materials can be categorized as culturally sensitive or not (Article III), information about the implications of categorization for digitization and/or online publication (Article IV), and opportunities for Indigenous cultural communities to participate throughout the digitization lifecycle (Articles III & IV). In creating these practices, we drew from a range of prior exploration and work by memory institutions, scholarly researchers, and professional organizations that have drafted standards in collaboration with Indigenous communities, including among others:

- the framework developed by the American Philosophical Society’s [Protocols for the Treatment of Indigenous Materials](#)¹;
- previous statements and declarations that address and make recommendations for the handling of Indigenous content within cultural collections, including the [Protocols for Native American Archival Materials](#)² and [United Nations Declaration of the Rights of](#)

¹ American Philosophical Society has provided permission to UC Berkeley Library for the adaptation of the *Protocols for the Treatment of Indigenous Materials*.

² These were published by First Archivist Circle in 2007, adopted by SAA in 2018, and endorsed by ACRL in February 2020. The protocols were created “to guide libraries and archives in engaging in culturally responsive care of Native American archival materials and in providing culturally appropriate service to communities.”

[Indigenous Peoples](#)³.

We also incorporated recommendations from the March 2019 working group report on [Native American collections in archives, libraries, and museums at the University of California, Berkeley](#) ("Report"). The Report discusses the "relationships among Indigenous people, the State and University of California, and Berkeley's Native American collection" and recognizes crucial "ethical and moral considerations" in the stewardship of Indigenous materials in the library and University collection. The report recommends that the University take active steps "to improve accessibility of digitized and undigitized Native American materials in campus archives, libraries, and museums" and "to empower Native American individuals, communities, and tribes to participate in the curation, and assert cultural ownership, of materials in campus archives, libraries, and museums."

In keeping with the Report's recommendations, these Indigenous Materials Local Practices acknowledge the historical trauma inflicted upon Indigenous communities and potential harm that results from the appropriation of "cultural, ethnographic, linguistic, and personal materials from Native American people without collaboration and consent." We similarly recommend a mindful and collaborative stewardship process with regard to the cultural materials of Native American and other Indigenous communities. We recognize the inherent limitations of our efforts and view these local practices as one of many necessary changes that are needed to begin to address the historical trauma levied upon Native American communities.

The Report also notes that, "University of California archives, libraries, and museums, as units of a public university, curate their collections in trust for the people of California." The referenced people include both members of Native American and Indigenous communities, and the rest of the California population. We have developed these local practices with the understanding that, as set forth in the Report, "dual trust relationships exist—both to the people of California and to the people of Indigenous nations. It is right for the latter to assert their cultural ownership over what we keep in trust for them, and to guide our curation of it." Accordingly, our Indigenous Materials Local Practices facilitate cultural community participation in various aspects of evaluation and decision-making.

Campus Context

It is also worth explaining how these Local Practices can connect with broader work on the UC Berkeley campus to (1) revise existing university policy regarding Native American object repatriation, and (2) comply with the Federal Native American Graves Protection and

³ Specifically, Article 31, which states: "Indigenous people have the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions."

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Repatriation Act (NAGPRA) and the California Native American Graves Protection and Repatriation Act (CalNAGPRA).

As of June 2021 the University of California is engaged in a revision to its Native American Cultural Affiliation and Repatriation Policy. That policy covers ways that UC Berkeley has and will comply with obligations set forth in NAGPRA and CalNAGPRA. NAGPRA and CalNAGPRA control the handling of Indigenous Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony. Whereas the proposed UC policy governs the legal obligations with regard to human remains and cultural items used in Native American rites and ceremonies, these Local Practices focus on documents and other materials created by or about Indigenous communities, and lay out ethical (as opposed to legal) obligations for stewarding such documents within UC Berkeley Library collections. It is possible that, in implementing these Local Practices, we may incorporate similar processes to NAGPRA and CalNAGPRA regarding consultation and oversight for some categorizations of sensitive materials, to be determined in conjunction with relevant stakeholders.

Ongoing Evaluation

These local practices constitute a living document that will change over time as the UC Berkeley Library enters into new partnerships with indigenous communities and maintains its strong ties with existing partners. We are further committed to a recurring three-year review cycle to provide ongoing engagement and assessment. The tri-annual review will account for policy efficacy from the perspective not only of the Library, but also the wider community of tribes, stakeholders, and researchers.

Article I: Purpose and Intent

A. The Indigenous Materials Local Practices are intended to provide guidance to UC Berkeley Library to:

1. Adopt a categorization framework resulting in digitization and publishing decisions that account for (a) the value of making Indigenous materials available online to cultural communities, researchers, and the public, and (b) the potential for harm or exploitation of people, resources, or knowledge, and;
2. Enable the Library to understand the conditions under which it is necessary or desirable to engage with Indigenous communities in the categorization of Indigenous collection materials in order to facilitate digitization and online access decision-making.

B. The Indigenous Materials Local Practices are not intended to address every possible situation that may arise within the UC Berkeley Library's collection digitization program (Digital Lifecycle Program, or DLP), but rather are aimed to provide guidance in assisting the Library in balancing its mission to provide online access with its obligation to protect culturally sensitive materials of Indigenous communities. In addition, the local practices pertain only to digitization

and online access decision-making; they do not assign downstream usage statements to the Indigenous materials (e.g., Traditional Knowledge labels or other licenses) for reuse.

C. The Indigenous Materials Local Practices are intended to be a living document, subject to change with the evolving mission of the Library and considerations for the communities whose materials are stewarded by the Library.

Article II: Definition of Terms⁴

A. “Cultural community” means, as forth in WIPO’s [Glossary of Key terms related to intellectual property and genetic resources, traditional knowledge, and traditional cultural expressions](#), a tightly knit social unit whose members experience strong feelings of unity and solidarity and which is distinguished from other communities by its own culture or cultural design, or by a variant of the generic culture.

B. “Culturally sensitive materials” means any Indigenous material that depicts a tribal spiritual or religious place, object, belief or activity. A spiritual or religious activity may include prayers, ceremonies, burials, songs, dancing, healings, and medicine rituals. The definition of “culturally sensitive” may include any other definition provided in writing by a specific tribe with respect to any Indigenous materials held by the UC Berkeley Library depicting that tribe’s culture or from which the materials originate. Upon receipt of such a written definition, UC Berkeley Library will then determine whether the tribe’s definition falls within the spirit of the definition set forth herein.

C. “Harm” or “Exploitation” means:

1. When referencing *objects, materials, or resources*: economic disadvantage to the interests of a cultural community (e.g. unfair competition, commercial appropriation); violation of customary or national laws, or the established practices of a cultural community; or risk of looting or defiling of cultural sites or resources.
2. When referencing *people*: a deprivation or violation of, or credible threat to, people’s liberty, bodies, or well-being.

D. “Indigenous materials” means any photograph, drawing, book, manuscript (including items associated with manuscript collections such as wax seals and awards), research or any other type of printed material (whether bound or not), recordings (audio and video), art, graphics (such as maps and illustrations), artifacts, microfilm and digital material that documents or relates to the culture and language of native communities indigenous to the Americas.

E. “Tribe” means the official governing body of a tribe, typically made up of a Tribal Council and its elected or appointed Chief, President, Governor, Chairman, or other person who serves as

⁴ Definitions of “Indigenous materials”, “culturally sensitive materials”, and “tribe” based on the American Philosophical Society’s *Protocols for the Treatment of Indigenous Materials*.

the head of the Executive Branch of the official Tribal Government, or a tribal department, agency, entity, or organization delegated authority by a tribe to deal with tribal cultural matters. Where there are traditional governments or religious or traditional leaders (clans or societies or Canadian communities), or practitioners generally recognized within a tribal community as being the official protectors or keepers of a tribe's traditions or having knowledge of "culturally sensitive" material, "tribe" may include these religious or traditional leaders or practitioners. Where a tribe has divided or separated into more than one tribal Band, Community, Confederation, or Nation, and at least one tribal Band, Community, Confederation, or Nation from where the materials originate or were collected or whose culture is depicted in the materials has defined the materials as "culturally sensitive, UC Berkeley Library will consider the decision of that tribal Band, Community, Confederation, or Nation. For purposes of these Indigenous Materials Local Practices, the term "tribe" refers to the tribe where the materials originate or were collected or whose culture is depicted in the materials.

Article III: Categorization Procedures for Indigenous Materials

A. In recognition of the right of the tribes to keep their respective cultures sacred, it is the intention of the UC Berkeley Library to follow these Indigenous Materials Local Practices in classifying materials and in honoring requests for digitization or online publishing of Indigenous materials.

B. UC Berkeley Library will categorize Indigenous materials (regardless of genre) into one of the following categories using the definition of "culturally sensitive" set forth in Article 1.B. above:

1. not culturally sensitive
2. culturally sensitive
3. potentially culturally sensitive

C. Each of these three categories shall carry a presumption relevant to digitization and online access provision set forth in Article IV below. Categorization may occur at any point in the lifecycle of the materials, including at appraisal and acquisition, accessioning, processing, access, and digitization. UC Berkeley Library may designate materials as "culturally sensitive" at any time, even if said materials were not previously designated as such.

D. In cases where UC Berkeley Library lacks the information to assign one of the above categories to Indigenous materials, the Library may coordinate the categorization of materials through consultation with the tribes from which materials originate or were collected, or whose culture is depicted. In categorizing Indigenous collection materials, UC Berkeley Library may also consult with recognized subject matter experts and other libraries and/or cultural institutions. Consultation is meant to provide cultural, ethical, and

historical checks⁵ to assess the potential for harm and exploitation to people, resources, or knowledge in providing access to Indigenous materials.

E. Once designations of cultural sensitivity are made, UC Berkeley Library may at its discretion alter the material's designation, including consultation with or notification by a tribe, scholar, or other person with knowledge that the materials are culturally sensitive.

F. Where UC Berkeley Library determines that specific materials contain both culturally sensitive information and information that is not culturally sensitive, UC Berkeley Library may designate only a part of the materials as "culturally sensitive."

G. UC Berkeley Library maintains the right to make the final decision on the designation of "culturally sensitive," although reasonable efforts will be made to learn about and understand tribal protocols regarding the materials in question.

H. If UC Berkeley Library has knowledge of a conflict between tribes regarding the treatment of Indigenous materials, including the publishing of said materials, UC Berkeley Library shall strive to, but is not required to, bring the tribes together to discuss the treatment of the materials.

Article IV: Implications of Categorization

A. *Materials categorized as "culturally sensitive"*: The potential for harm or exploitation to people, resources, or knowledge is presumed to outweigh the potential value to cultural communities, researchers, or the public. Materials deemed "culturally sensitive" will not be made available online by the Library. Those materials may still be digitized for preservation purposes, or to provide limited and/or restricted access.

B. *Materials categorized as "not culturally sensitive"*: The potential value to cultural communities, researchers, or the public is presumed to outweigh the potential for harm or exploitation to people, resources, or knowledge. Materials deemed "not culturally sensitive" may be digitized and made available online by the Library as permitted by the Responsible Access Workflows.

C. *Materials categorized as "potentially culturally sensitive"*: The potential value to cultural communities, researchers, or the public is presumed to outweigh the potential for harm or exploitation to people, resources, or knowledge. Materials deemed "potentially culturally sensitive" can be digitized and made available online by the Library, provided however that the Library will engage in proactive communications with the relevant Indigenous or cultural communities regarding the designation and online accessibility of these materials. This could involve informing tribal representatives before a public digital release of materials.

⁵ For more on such checks, see Christen, Kimberly. "Relationships, Not Records : Digital Heritage and the Ethics of Sharing Indigenous Knowledge Online." *The Routledge Companion to Media Studies and Digital Humanities*, Routledge, 2018, pp. 403–12, doi:10.4324/9781315730479-42.

D. In some cases, UC Berkeley Library may have an agreement (e.g., a Memorandum of Understanding) with a tribe setting forth the terms and conditions under which UC Berkeley Library may provide access to the materials. In those situations, the Library will follow the terms of the agreement.

E. In some cases, UC Berkeley Library may ask researchers to accept certain conditions for ethical viewing and use of Indigenous materials online.

F. UC Berkeley Library may rely on a range of access parameters for Indigenous materials deemed “not culturally sensitive” or “potentially culturally sensitive.” These parameters may be defined in collaboration with tribes and subject matter experts.

G. For any Indigenous materials that the Library makes available online, the Library shall endeavor to create metadata that adequately and ethically contextualizes these digitized Indigenous materials, and may consult with tribes and subject matter experts in the creation of ethical metadata practices. This includes explicitly acknowledging, when appropriate, the role of Indigenous communities in the creation and/or co-creation of collections materials.