

# **LIBRARY OF CONGRESS ACCESS POLICY**

## **Culturally Sensitive Materials Relating to Indigenous Peoples of the United States, Canada, and Mexico**

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### **Background**

The Library of Congress seeks to make its collections available to all. However, portions of the Library's collections material warrant restrictions on access or use, such as being served in specific circumstances or under certain controls. The Library's collections include materials with various access and use restrictions, originating from a variety of communities, including Indigenous tribal nations and bands, and ethical responsibilities to communities of origin are a significant factor in setting restrictions. Various mechanisms are in place for communities and creators of all backgrounds to articulate use and redistribution permissions for Library collections relating to their communities.

For the purposes of this policy, Indigenous peoples of the United States, Canada, and Mexico refers to Native American, Alaska Native, and Native Hawaiian communities in the United States, regardless of whether the community is federally recognized; Indigenous peoples of Canada (including First Nations, Inuit, and Métis Nation) and Mexico; and Indigenous peoples, groups, or nations living on both sides of U.S. federal borders with Canada and Mexico. The scope of this policy includes material described as follows: The Library is responsible for some collections and single items that may contain property and knowledge of Indigenous peoples of the United States, Canada, or Mexico that are not intended to be shared outside of a community of origin, should only be shared under certain circumstances, or may be identified as sacred in nature. The Library considers these culturally sensitive materials and establishes broad terms for their access and use within this policy. At times, the Library and communities of origin may establish shared stewardship agreements or memorandums of understanding establishing access and use rules beyond those in this policy.

The Library acknowledges the need to consult with tribal partners in determining access and use restrictions, and prioritizes indigenous knowledge and communication from the communities documented in its collections, including communication on appropriate access and use of the related collections. When cultural authorities or tribal government leaders share new information on Indigenous materials in Library collections, a culturally sensitive determination should be made when new information warrants, including determinations which might result in removal from online access or change to the access designation.

Note also that the [Native American Graves Protection and Repatriation Act of 1990](#) (NAGPRA) applies to the Library, but is at most peripherally relevant to Library collections. The Library emphasizes transparency and consultation when working with culturally sensitive Indigenous materials.

## Definition of Culturally Sensitive Materials

The following definition of culturally sensitive materials is adapted from the Protocols for Native American Archival Materials (PNAAM)<sup>1</sup> and the American Philosophical Society Protocols for the Treatment of Indigenous Materials<sup>2</sup>:

*Culturally sensitive materials may include property and knowledge that is not intended to be shared outside the community of origin; should be shared only under certain strictures or circumstances; or which may be identified as sacred in nature. What is determined to be culturally sensitive can vary by community and may include material that represents a tribal spiritual or religious place, item, belief, or activity to which general access should be restricted or subject to certain terms. A spiritual or sacred activity may include prayers, ceremonies, burials, songs, dances, healings, and medicine rituals not generally open to non-native or general public witness or consumption in published or other form, or in traditional practice. The Library welcomes Indigenous communities to propose other written definitions of culturally sensitive materials that reflect their tribal culture and related Library holdings.*

*The Library asks that researchers approach materials of Indigenous peoples with respect for the culture and sensibilities of the people whose lives, ideas, and creativity are documented. Researchers must seek permissions for access and use when warranted.*

In addition, the [Collections Retention Policy](#) addresses Library materials containing Personally Identifiable Information, but that is beyond the scope of this policy.

### Indigenous Recordings Notice

Indigenous recordings are not universally considered culturally sensitive, but custodial divisions<sup>3</sup> are encouraged to include a notice in the catalog records and finding aids for all Indigenous recordings. The notice addresses responsibilities to honor restrictions on culturally sensitive materials beyond

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<sup>1</sup> First Archivist Circle. (2007, April 9). *Protocols for Native American Archival Materials*. Retrieved from Protocols for Native American Archival Materials: <https://www2.nau.edu/libnap-p/protocols.html>

<sup>2</sup> American Philosophical Society. (2014). *The American Philosophical Society Protocols for the Treatment of Indigenous Materials. Proceedings of the American Philosophical Society* (pp. 411-420). Philadelphia, PA: American Philosophical Society.

<sup>3</sup> “Custodial” and “curatorial” divisions are units of the Library referenced throughout this policy. Custodial responsibilities generally refer to the ongoing maintenance of the collections and materials within them. Curatorial responsibilities generally refer to the recommending of materials to be added to the Library’s collections and the continuing curation of the collections. Although both custodial and curatorial tasks are often extant within the same division, that is not always the case.

obligations such as the term of copyright or copyright limitations and exceptions.

*Ethical responsibilities extend beyond legal obligations (such as the term of copyright or copyright limitations and exceptions). Patrons are responsible for doing their due diligence, which may include obtaining permission from an appropriate cultural authority or tribal government leader to access and make use of a work. For example, the Music Modernization Act outlines special legal obligations for the non-commercial use of pre-1972 sound recordings, as well as regulations prescribing rules for conducting a good-faith, reasonable search to determine whether a pre-1972 ethnographic sound recording of Indigenous peoples is being commercially exploited. The Library and its patrons have ethical responsibilities to honor restrictions on culturally sensitive materials that go beyond the consideration of whether a particular work is being commercially exploited by its rights holder.*

## Access and Use Rules

Collections documenting Indigenous peoples of the United States, Canada, and Mexico fall into different categories that involve different access and use rules. These designations are:

- Unrestricted – These materials may exist in unpublished, published, or copyrighted form. They have either been designated as open to access through the application of indigenous [Traditional Knowledge Labels](#)<sup>4</sup> or have long been publicly available without formal objections. These materials are served according to the rules of the custodial unit. These materials may be copied for research purposes and quoted or made accessible online in keeping with existing copyright and intellectual property rights law. These materials must also include proper attribution to the community of origin and to the collection source and the Library of Congress. The Library invites communication from cultural authorities or tribal government leaders who may have concerns about unrestricted materials in Library collections. When new information is available, the Library should make a culturally sensitive determination, which might result in removal from online access or change to the access designation.
- Culturally sensitive – These materials fall within the Definition of Culturally Sensitive Materials. Once the culturally sensitive determination has been made, no online access or onsite copying is permitted without written permission from the community of origin or a designated donor or cultural authority or tribal governmental leader.<sup>5</sup> Written understandings or shared stewardship agreements regarding the viewing, copying, or publication may be needed and should be negotiated at the time of any new acquisition, with ongoing contact information and permission authorities clearly defined. Onsite access in accordance with the policies and practices of the custodial division will be permitted unless other arrangements are made.
- Other reproduction restricted materials – Some materials not officially designated as culturally sensitive may be accessible to researchers but would require permission from communities of

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<sup>4</sup> For an example of Traditional Knowledge Labels used at the Library of Congress, see <https://www.loc.gov/collections/ancestral-voices/about-this-collection/rights-and-access/>

<sup>5</sup> Such as Tribal Historic Preservation Officers, government officials, or other leaders

origin or donors to be photographed or copied.

These categories and rules are intended as broad guidance to be applied across curatorial divisions. For some materials, communities of origin and the Library may establish additional access and use rules beyond those listed above. Curatorial divisions establishing additional restrictions are encouraged to designate them via the process noted in the following section.

#### *Duplication and Digitization of Materials for Communities of Origin*

In some limited circumstances as resources and time allow, Library divisions may provide duplications or digitized copies of Indigenous materials to tribes, nations, or communities of origin free-of-charge. This primarily applies to material that originates from these communities, rather than material created, or published by individuals, unless duplication or digitization is otherwise permitted in agreements accompanying the material.

Requests for duplicated or digitized material should originate from the tribal cultural authority or governmental leader with authority to approve duplication and digitization. Duplication and digitization is provided only as Library resources and time permit.

Communities of origin and the Library may establish agreements that differ from the duplication and digitization guidance above.

### **Process for Limiting Access and Use**

Curatorial divisions that are aware of existing culturally sensitive materials in their collections are encouraged to codify the terms of access (if they have not already done so) in consultation with appropriate cultural authorities or tribal government leaders, note the terms in their case files, and add the culturally sensitive designation to the associated catalog record or finding aid as indicated in the bulleted list below. If there are conflicting wishes among cultural authorities in the same community, the Library will manage this on a case-by-case basis in consultation with them.

Any future tribal requests should proceed in consistent fashion and include staff documentation for administration of the collection, as well as any further documentation or modifications in catalog records, finding aids, and/or metadata created for the collection as deemed necessary by terms of understanding and/or practices of divisions. The Library's consultations with communities of origin regarding culturally sensitive designations or other agreements should be made with the community-designated cultural authorities or tribal government leader(s) authorized to advise or grant permission on such matters.

The template for curatorial units to document designation of materials as culturally sensitive is in Appendix A. The template is to be used whether a designation is initiated within the Library or via a request from cultural authorities or tribal government leaders. The following includes a set of guidelines for handling Library materials according to the use and access rules described above:

- Culturally sensitive materials – Custodial divisions are encouraged to include the [Definition of](#)

[Culturally Sensitive Materials](#) as listed earlier in this policy in a public note field, or in the [<userrestrict> tag](#), Conditions Governing Use, in [finding aids](#). A general statement about the access and use of culturally sensitive materials should be included in finding aids' front matter. Folders or containers containing culturally sensitive materials should have additional indicators of culturally sensitive content. For individual catalog records, the text below may be included with a link to the full definition on the Library's web site.

*The Library asks that researchers approach materials of Indigenous peoples with respect for the culture and sensibilities of the people whose lives, ideas, and creativity are documented. Researchers must seek permissions for access and use when warranted.*

- o In addition, custodial divisions are encouraged to add the below statement indicating the access and reproduction restrictions for these materials in a public note field or in the [<userrestrict> tag](#), Conditions Governing Use, in [finding aids](#):

*No online access or onsite copying is permitted without written permission from the community of origin or a designated donor or cultural authority or tribal governmental leader.*

- Indigenous recordings – Custodial divisions are encouraged to include the [Indigenous Recordings Notice](#) as listed earlier in this policy in a public note field, or in the [<userrestrict> tag](#), Conditions Governing Use, in [finding aids](#). A general statement about the access and use of culturally sensitive materials should be included in finding aids' front matter. Folders or containers containing culturally sensitive materials should have additional indicators of culturally sensitive content. For individual catalog records, the text below may be included with a link to the full notice on the Library's web site.

*Ethical responsibilities extend beyond legal obligations (such as the term of copyright or copyright limitations and exceptions.) Patrons are responsible for doing their due diligence, which may include obtaining permission from a tribal nation authority to access and make use of a work.*

- Additional terms – When the Library agrees to additional terms with communities of origin, these specific access restrictions should be offered in a public note field, or in the [<accessrestrict> tag](#), Conditions Governing Access, in [finding aids](#), such as "Served only with prior permission from \_\_\_\_." A general statement about the access and use of the materials should be included in finding aids' front matter. Folders or containers containing the materials should have additional indicators of restrictions.

Advisories and access or use restrictions are not simply a matter of limiting access for people outside of the community documented. Decision-making and views about proper use may change over generations, tribal community authorities, and intellectual property rights holders, or with better identification as to the nature of materials. New questions about culturally sensitive issues can continue to arise and need further discussion and deliberation by custodial divisions.

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## Appendix A

### NATIVE AMERICAN, ALASKA NATIVE, AND NATIVE HAWAIIAN ACCESS CONDITIONS REQUEST FORM

The Library of Congress strives to provide culturally responsive curation of the Native American documentary materials it stewards, knowing that some historic materials within Library collections contain culturally sensitive or sacred information from Indigenous communities.

As a public institution, the Library's goal is to provide access to materials whenever appropriate. In cases where Indigenous communities ask for additional access conditions, the following form is provided to help define for the Library the scope of the request and terms of the condition. In addition, requests for duplication of materials trigger a permissions process. This form serves as a starting point to establish appropriate access conditions; the Library welcomes continued conversations and collaboration beyond the submission of this form.

TRIBE:

TRIBAL CONTACT FOR PERMISSION AND ACCESS CONDITIONS (OFFICE, NOT INDIVIDUAL):

Title/Office:

Officer:

Address:

Phone:

Email:

Please provide the following:

- Identify items or collections for access condition
- Access conditions (e.g. Traditional Knowledge Labels, etc.)

ADDITIONAL CONTEXT OR INFORMATION:

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_