PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS RELATED TO INDIGENOUS LANGUAGES IN THE USA

June L Lorenzo
Pueblo of Laguna/ Diné
INDIGENOUS LANGUAGES AS TK

INDIGENOUS CREATION NARRATIVES AS TCES

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SPANISH COLONIALISM
1598-1680
1692-1821

IMPOSITION OF SPANISH RELIGION ON PUEBLO PEOPLES
BUILT OVER SACRED PLACES
FORBADE TRADITIONAL PRACTICES
LEGAC Y OF SECRECY

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Gov’t Policy Impact on Indigenous Languages

1880’s to 1934

Policy of Assimilation (Cultural Genocide)
• Boarding Schools
• Loss of Land – General Allotment Act

1930’s

American Bureau of Ethnology – Collected TCEs

1940’s – 1960’s

Termination
• End Fed trust relationship
• Urban Relocation

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Shift in Use of Indigenous Languages (Did Indigenous Peoples benefit?)

• WWI – Choctaw Phone Squad
• WWII – Active recruitment - Navajo Code Talkers
• Use of other Indigenous Languages (14) in Pacific and Europe
• Translation of Bible into Indigenous Languages

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ESTIMATED OVER 100 INDIGENOUS LANGUAGES EXIST TODAY IN USA

LESS THAN HALF OF WHAT EXISTED BEFORE COLONIZATION

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Pueblo of Acoma Origin Narrative

• 1928 – Recorded Acoma Origin Narrative without consent

  Rush by American Bureau of Ethnology to gather tk and tces

1946 – Matthew Sterling, director of BAE, published “The Origin Myth of Acoma and Other Records”
  Identity of “informant” revealed

2007 - Acoma contacted Nabakov when they leaned of his intent to republish; asked him to appear before Pueblo Council; asked for copy of manuscript


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• Nabokov: original 1946 version is in the public domain, it has been republished before (e.g., by Forgotten Books in 2008), and the text is widely available online.

• Sept 25, 2015 - Nabakov appeared before Acoma Council and offered them royalties. They refused.

• 2d Lt. Governor Kurt Riley: ritual knowledge is conveyed on a need-to-know basis, and that the Pueblo leadership should decide what to share and what to conceal.

“Controversy erupts over Peter Nabokov's publication of ‘The Origin Myth of Acoma Pueblo’, Santa Fe New Mexican, Jan 21, 2016, Khristaan D. Villela

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Indian Country Today,  Sept 15, 2016
Alex Jacobs

“Don’t Buy this Book! Acoma Pueblo vs Peter Nabokov:
When the Sacred is Made Profane
Peter Nabokov insults the Acoma Pueblo with Origin Myth of Acoma Pueblo”

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Theresa Pasqual – Pueblo of Acoma
Historic Preservation Office Director

• Acoma wanted Nabakov, a well known scholar to understand the Acoma position and ideally become an advocate and example for other authors.

• Wanted Penguin Publishing, like a curator in a museum, to have the ethical obligation to ask whether they were perpetuating the taking of our intellectual property by publishing the book.

• We know better but don’t do better.

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PRESERVING AND MAINTAINING INDIGENOUS LANGUAGES: COPYRIGHT ISSUES

WHO DOES THE LANGUAGE BELONG TO?

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Case of the Language Conservancy and Indigenous Languages

• Standing Rock Sioux Tribe
  Dictionaries, textbooks and recordings – decades of work
  Consortium asserted copyright control over access to materials
  Not free and accessible to communities who helped to create the products
  Other Indigenous Peoples who want to preserve languages in similar situation

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“Lakota elders helped a white man preserve their language. Then he tried to sell it back to them.”

NBC News, June 3, 2022, Graham Lee Brewer

• “No matter how it was collected, where it was collected, when it was collected, our language belongs to us. Our stories belong to us. Our songs belong to us,” Ray Taken Alive, Lakota teacher, to SRST Council in April 2023.
International Decade of Indigenous Languages

• What measures can be taken to protect Indigenous languages in conformity with the UN Declaration on the Rights Of Indigenous Peoples?
Music Works
Modernization Act -2018

• Establishes a system to find and compensate artists whose music was recorded before 1972 whenever their work is streamed online today.

• If performer cannot be located, allows early folk and ceremonial songs to become public for non-commercial purposes. Artists who are located can appeal the use of their recordings.

• Those who cannot be found? May not even know the recordings exist. (!)

• Numerous recordings of Indigenous ceremonies and events in early 1900’s – without consent. Could be released to the public by museums holding them - in online catalogs.

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Facilitator’s Alt for Article 5- Scope of Protection in TK and TCE Texts

• 5 (c): In other cases, where it appears traditional knowledge/ a traditional cultural expression is being used without free, prior and informed consent, Member states, Contracting parties shall/ should provide mechanisms for Indigenous Peoples, local communities or other beneficiaries to seek the protections as set out under paragraph 5(a).

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