

The American Philosophical Society *Protocols for the Treatment of Indigenous Materials*

INTRODUCTION

The creation of the American Philosophical Society *Protocols for the Treatment of Indigenous Materials* is the result of 3 years of close collaboration between the APS library staff, led by Librarian Martin Levitt,¹ and the APS's Native American Advisory Board, headed by Robert Miller, an enrolled member of the Eastern Shawnee Tribe of Oklahoma and a law professor at the Sandra Day O'Connor College of Law at Arizona State University. The advisory board, whose members are listed at the end of the document, included representatives from the Tuscarora Nation, Eastern Shawnee, Pueblo of Isleta, Eastern Band of Cherokee Indians, Cherokee Nation, Leech Lake Band of Ojibwe, Penobscot Nation, and Mohawk Nation at Akwesasne.

The APS *Protocols* have played an important role in helping the Society build stronger ties to the indigenous communities whose cultural materials are housed in the library. Beginning in 2008, the APS implemented a Digital Knowledge Sharing (DKS) initiative that established partnerships with four indigenous communities in the United States and Canada. The DKS program brought teams of Native American elders, teachers, and scholars to the APS. The teams selected materials for digitization that would strengthen ongoing language preservation and cultural revitalization projects in their communities. During the course of this process, indigenous community members helpfully identified archival materials considered to be culturally sensitive. Although the APS will keep with its tradition of allowing open access to collections (except for those accepted into the collection with restrictions), material designated by indigenous communities as culturally sensitive may not be photographed or otherwise reproduced without express permission from the communities of origin, a policy especially designed to keep sensitive material from circulating on the

1 Librarian Martin Levitt retired effective 31 December 2014.

Internet. It is a compromise that respects the traditions of the APS and our current and future Native American partners.

The APS has long been aware of culturally sensitive materials in its collection, such as the paintings of sacred ceremonies from the Pueblo of Isleta, Cherokee sacred formulas, and Iroquois masks. These materials were collected decades ago, before the current ethical standards of anthropology were put into place. The APS has always been protective of these materials as part of its mission to steward its world-class collection of indigenous materials from North and South America. The *Protocols* allowed this process to be formalized and provided a valuable opportunity to co-steward the collections with representatives from the communities where the materials originated. In doing so, the APS has helped dispel the historical distrust that resulted from the unethical collection practices of the past and forged a new bond of trust that has proven mutually beneficial to both the APS and indigenous communities. Although only a tiny percentage of the APS's large Native American collections have been designated as culturally sensitive, the Nations have been so appreciative of these efforts that they have forged long-term partnerships with the APS that have many additional benefits.

In appreciation for protecting their sacred materials, for example, indigenous community members have graciously allowed themselves to be recorded explaining the significance and identifying community members in old photographs, thus greatly enhancing the Society's knowledge of its own collections. The APS, in turn, has digitized old stories, songs, photographs, and ethnographic and linguistic materials, which it has shared with tribal communities who have used these digital materials to great effect.

One of the most successful outcomes of the DKS partnerships was the establishment, in 2014, of the new APS Center for Native American and Indigenous Research, with Dr. Timothy Powell as director and Brian Carpenter as senior archivist. It is our greatest hope that these partnerships with indigenous communities and the concept of co-stewarding the collections will continue for many years to come. As our partners from the Eastern Band of the Cherokee Indians taught us, the value of one's actions should be measured in terms of whether it honors those seven generations in the past and benefits those seven generations in the future. It is a value system, interestingly, that the APS shares, providing the basis for managing a collection that is more than 225 years old.

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American Philosophical Society *Protocols for the Treatment of Indigenous Materials*

ARTICLE I. PURPOSE AND INTENT OF THE *PROTOCOLS*

A. These Protocols are a result of discussions of the American Philosophical Society Library (hereinafter “APS”) and its Native American Advisory Board regarding indigenous materials held by APS, some of which are culturally sensitive. The Protocols are intended to: 1) give APS guidance in determining what indigenous materials might be culturally sensitive, in categorizing materials as culturally sensitive, and in determining who can decide whether culturally sensitive materials can be reproduced; 2) to allow APS to enter into understandings and agreements with tribes and donors on the treatment of indigenous materials; and 3) give APS guidance in assisting tribes in publishing materials.

B. The Protocols are not intended to be hard and fast rules or to address every possible situation, but rather are intended to provide guidance in assisting APS in balancing its mission of free access to the public with the right of donors and tribes to protect culturally sensitive materials. The Protocols are intended to be a living document, subject to change with the evolving mission of both APS and the tribes whose materials are stored at APS or whose culture is depicted in materials stored at APS.

C. The following principles and legal obligations were taken into consideration in developing the Protocols:

1. Recognition of the fact that the materials belong to APS;
2. APS’s mission to provide stewardship, preservation, and free access to its materials for educational and scholarly purposes;
3. Some materials provided to APS by donors have legal restrictions, which APS is legally obligated to comply with;
4. APS’s recognition that some of the materials are culturally sensitive to indigenous tribes of the Americas;
5. APS desires to work in partnership with tribes and give tribes a voice in determining what is culturally sensitive, and to respect the sovereign right of Indian tribes to protect culturally sensitive materials; and
6. APS’s goal of balancing these principles and legal obligations.

APS POLICY OF FREE ACCESS; POLICY RELATION TO CULTURALLY SENSITIVE MATERIAL

A. Policy of Free Access

The APS is a special collections library, which holds private manuscripts. It is APS's policy to allow any person with a legitimate need to view on-site any materials held by APS, regardless of the classification of the material as culturally sensitive. APS may put restrictions on the viewing of materials that are classified culturally sensitive, as determined by either the donor, APS, or a specific tribe, to protect the physical integrity of the materials, such as requiring viewing in the presence of APS staff and/or prohibiting photographing of the materials.

B. Policy Relating to Culturally Sensitive Material

However, in recognition that APS holds some materials that have legal restrictions or that are culturally sensitive, and in recognition of the right of tribes to keep their respective cultures sacred, APS will follow these protocols in classifying materials and in honoring requests for viewing, reproduction of, or on-line publishing of indigenous materials that have been classified as either culturally sensitive or whose classification is yet undetermined. Additionally, APS will enter into discussions and written understandings and/or agreements with tribes regarding materials in APS's collection.

ARTICLE 3. DEFINITION OF TERMS

A. "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), microfilm and digital material that documents or relates to the culture and language of native communities indigenous to the Americas. APS does not collect native artifacts, and therefore the term "indigenous materials," as used in these Protocols, does not include artifacts.

B. "Legitimate need" means a reasonable need to view the materials as determined by APS staff. A person doing scholarly research, a tribal representative, or a member of a tribal community who has permission from the tribe to view the materials, shall be deemed to have a legitimate need.

C. “Materials that are culturally sensitive” means any indigenous material that depicts a tribal spiritual or religious place (e.g., kiva or Midewiwin map), object (e.g., Iroquois masks), belief or activity (e.g., Cherokee sacred formulae). 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 APS depicting that tribe’s culture or from which the materials originate. APS will then determine whether the tribe’s definition falls within the spirit of the definition set forth herein.

D. “Materials with legal restrictions” means any material whose donor has put legal restrictions on the material pursuant to an instrument recognized under the law, or any material which is otherwise restricted by principles of intellectual property law.

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 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, i.e., the Eastern Band of Cherokee Indians, has defined the materials as “culturally sensitive, APS will defer to the decision of that tribal Band, Community, Confederation, or Nation. For purposes of these Protocols, the term “tribe” refers to the tribe where the materials originate or were collected or whose culture is depicted in the materials.

ARTICLE 4. CATEGORIZATION OF INDIGENOUS MATERIALS

A. Materials with Legal Restrictions

Materials with legal restrictions do not require further categorization as they already have restrictions on viewing, reproduction, or on-line publishing. APS will comply with these restrictions as to all materials that fall under this category.

B. Materials Already Categorized as Culturally Sensitive

APS has already categorized some indigenous materials as being “culturally sensitive.” This has been done by APS in coordination with or upon the request of specific tribes from which the materials originated. Examples of materials that have been classified as “culturally sensitive” are the Isleta paintings, photographs of the Iroquois masks, and the Cherokee formulae. Restrictions on reproduction and web access through APS’s website already apply to these materials.

C. Materials Not Yet Categorized as Culturally Sensitive

1. APS will continue to categorize materials (regardless of genre) into one of the following categories using the definition of “culturally sensitive” set forth in Article 3.C above:
 - a. not culturally sensitive
 - b. culturally sensitive
 - c. potentially culturally sensitive
2. APS may consult with and coordinate the categorization of materials with the tribe from which materials originate or were collected from or whose culture is depicted. Consultation and coordination may occur with the religious or traditional leaders of, or persons designated by, a tribe. If the tribe or tribal community no longer exists, APS may consult with recognized cultural experts. In situations where a tribe has informed APS in writing that specific materials held by APS originate with or were collected from the tribe or depict the tribe’s culture and are “culturally sensitive,” APS may do any of the following:
 - a. Where APS determines that specific materials contain both culturally sensitive information and information that is not culturally sensitive (e.g., dictionaries, herbal reference books), APS may designate only a part of the materials as “culturally sensitive”;

- b. The APS 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 materials in question. If APS does not agree with the tribe that all or part of the materials meet the definition of “culturally sensitive” as defined in these Protocols, APS will apply the below guidelines in determining whether all or some of the materials are “culturally sensitive”:
 - i. The APS policy of public access to library material for educational purposes;
 - ii. Whether the material meets the definition of “culturally sensitive” set forth in Article 3 above;
 - iii. Any stipulations made in the original “deed of gift” under which the materials were donated to the APS. For example, if a deed of gift stipulates that the materials are to be shared only with medicine societies of the Eastern Band of Cherokees, this would indicate that the material is culturally sensitive.
 - c. APS may enter into written understandings and/or agreements (i.e., Memorandums of Understandings) with a specific tribe regarding the viewing, copying, or publication of indigenous materials.
 - d. APS may designate materials as “culturally sensitive” at any time, even if said materials were not previously designated as such. The change in designation of materials as “culturally sensitive” may be as a result of notification to APS by a tribe, scholar, or other person with knowledge of the materials, that the materials are culturally sensitive.
3. Where APS has insufficient information to categorize materials and has made a request for information from a tribe and has not received information from the tribe within sixty (60) days of the request, or in any instance in which it desires a second opinion, APS may utilize any of the following methods:
- a. Consult tribal contacts (e.g., tribal historic preservation offices, tribal museums, tribal libraries, cultural committees, tribal elders, religious leaders, traditional leaders)
 - b. Contact the APS Native American Advisory Board
 - c. Contact other tribal representatives (i.e., volunteers who have agreed to be coordinators for a specific tribe or tribal group)
 - d. Contact other libraries
 - e. Contact other recognized experts.

4. If APS has knowledge of a conflict between tribes regarding the treatment of indigenous materials, including the publishing of said materials, APS shall strive to, but is not required to, bring the tribes together to discuss the treatment of the materials.

ARTICLE 5. VIEWING OF AND REQUESTS FOR INDIGENOUS MATERIALS

APS's policy is to allow for on-site review of all materials to any person with a legitimate need, except materials with legal restrictions set forth by donors when donating the materials or by principles of intellectual property law. Therefore, materials without legal restrictions shall be available for viewing within the APS library by any person with a legitimate need. APS will make reasonable attempts to inform a tribe of any requests to view or obtain copies of indigenous materials originating from the tribe or depicting that tribe's culture.

- A. If an item is categorized as "materials with legal restrictions," APS will comply with the legal restrictions, including restrictions on viewing or reproduction of the materials.
 - B. If an item is categorized as "not culturally sensitive" upon determining a legitimate need, APS will allow viewing of the materials and may reproduce the materials and provide copies to any person or publish the materials on the APS website.
 - C. If an item is categorized as "culturally sensitive," the materials may be viewed by any person with a legitimate need within the APS library. However, APS will not reproduce the materials or give permission for the materials to be published in either print or digital media, or in any other format, except with the consent of tribal representatives of the tribe from which the materials originate (e.g., Isleta Paintings). APS will advise the person requesting reproduction or publication of the materials of the necessity of obtaining tribal consent.
1. If APS receives a request to reproduce materials that are categorized as culturally sensitive, unless the person making the request has written tribal consent and APS has determined that the consent is valid, APS may, but is not required to, make an effort to contact the tribe to obtain tribal consent. A tribe may also provide a written statement to APS setting forth the conditions under which APS may reproduce the materials or persons that may have access to the materials.

2. In some cases, APS may have an agreement (i.e., a Memorandum of Understanding) with a tribe setting forth the terms and conditions under which APS may provide access to the materials. In those situations, APS will follow the terms of the agreement.
 3. Where a tribe has provided consent for viewing, copying, or publication of materials to tribal representatives or specific individuals, APS will make all reasonable attempts to determine that the person requesting access is a tribal representative or the specific person who has consent. In doing so, APS may utilize its listing of tribal contacts, if one exists, for each tribe whose materials the APS holds.
- D. If an item is potentially culturally sensitive, APS will allow for viewing of the materials within the APS library, but will not reproduce the materials or give permission for the materials to be published in either print or digital form or any other format unless the person making the request has written tribal consent and APS determines that the consent is valid.
1. If the APS receives a request to reproduce materials that are potentially culturally sensitive, APS may, but is not required to, make an effort to contact the tribe to assist in determining whether the materials are culturally sensitive, and if so, to obtain tribal consent.
 2. APS will inform the person making the request for the materials of the categorization of the materials and that he/she is required to obtain tribal consent and to provide proof of tribal consent. If APS has tribal contact information, it will provide the information to the person making the request. If the tribal origin of the materials is unknown, APS will so inform the person making the request.
 3. If the APS is notified by a patron, scholar, or tribe that certain materials, not yet identified as culturally sensitive, should be reviewed, APS may pursue the categorization of the materials as set forth in Article 4 above.

ARTICLE 6. PRESERVATION AND PUBLISHING OF INDIGENOUS MATERIALS

The APS will continue to work with tribal nations in collecting, preserving, and publishing indigenous materials and treat them in

accordance with these protocols. APS will continue to acquire materials related to native culture and languages primarily, though not exclusively, from scholars. While the acquisition of new materials to the APS Library is governed by a separate policy, the Collection Development Policy, any materials related to Indigenous peoples acquired by the Library from any source will be subject to our Protocols.

It is with great humility the American Philosophical Society assumes the responsibility of stewarding its collections that include materials from Native American and indigenous communities. We want to give sincere thanks to the Native American Advisory Board, headed by Robert Miller (Eastern Shawnee Nation) and including Denise Zuni (Pueblo of Isleta), Watie Akins (Penobscot Nation), Tom Belt (Cherokee Nation), Larry Aitken (Leech Lake Band of Ojibwe), T.J. Holland (Eastern Band of Cherokee Indians) Vince Schiffert (Tuscarora Nation), Scott Stevens (Akwesasne Mohawk Nation), Jeremy Sabloff, Regna Darnell, Martin Levitt, Charles Greifenstein, Timothy Powell, and Brian Carpenter. We recognize that this is a living document that will change over time as the APS enters into new partnerships with indigenous communities and maintains its strong ties with existing partners. To be given the opportunity to co-steward the APS collections with the communities where the material originated is a great honor. The APS and its Native American Advisory Board submit this document in the hope that it will live on for many generations to come.