



NYU Journal of Intellectual Property and Entertainment Law:

2023 Annual Symposium on Indigenous Data Sovereignty (IDSov)

in collaboration with:

The Equity for Indigenous Research and Innovation Coordinating Hub (ENRICH)
and The NYU Engelberg Center on Innovation & Policy



Statement of Purpose

Consistent with its unique development, the New York University Journal of Intellectual Property & Entertainment Law (JIPEL) is a nonpartisan periodical specializing in the analysis of timely and cutting-edge topics in the world of intellectual property and entertainment law. As NYU's first online-only journal, JIPEL also provides an opportunity for discourse through comments from all of its readers. There are no subscriptions or subscription fees; in keeping with the open-access and free discourse goals of the students responsible for JIPEL's existence, the content is available for free to anyone interested in intellectual property and entertainment law.

Each year NYU Journal of Intellectual Property and Entertainment Law (JIPEL) hosts a spring symposium related to the themes on which we publish. This year our symposium will focus on the increasingly important topic of Indigenous Data Sovereignty (IDSov).

Despite Indigenous Peoples' long struggle for sovereignty over their lands, they are often excluded from conversations focused on their "data sovereignty." In response, the Indigenous Data Sovereignty, or IDSov, movement has emerged to recognize the fundamental rights and interests of Indigenous Peoples relating to the collection, ownership and stewardship of data relating to their communities, knowledge and lands. The multifaceted nature of IDSov gives rise to a broad spectrum of legal and ethical concerns, from data storage, ownership, consent and access, to intellectual property rights and other considerations about how their data are used in research, policy and practice.

The event is held in collaboration with ENRICH, a coordinating hub for equity concerning Indigenous research and innovation, co-directed by Jane Anderson (NYU) and Māui Hudson (University of Waikato), and the Engelberg Center on Innovation Law and Policy (NYU Law). The symposium will be organized around four panels: IDSov & Tribal Codes (Panel I), Government Agencies & IDSov (Panel II), Labels as a Technical Protection Mechanism (Panel III) and Fair Use & IDSov (Panel IV). The symposium is being held entirely over Zoom between two sessions (Panels I-II; March 1, 2023, Panel III-IV; March 2, 2023, Eastern Standard Time) so as to accommodate speakers from across the globe. The symposium brings together scholars from a variety of fields and perspectives, including Indigenous community leaders, as well as experts in law, public policy, medicine, global health, human genomics, anthropology, sociology, management and marketing. Following each of the four themed sessions, a roundtable discussion with invited speakers will be moderated by a member of the NYU law faculty. The proceedings from this year's symposium will also be compiled in a special issue that will be released in the coming months.

JIPEL is honored and grateful to be able to host all of the speakers and roundtable leaders, in addition to all those that attend this year's symposium. Most importantly we are honored to have the opportunity to bring wider attention to the IDSov movement, and, more broadly, Indigenous Peoples across the globe.

Jacob Golan, Ph.D.
Editor-in-Chief
JIPEL, NYU School of Law

JIPEL acknowledges the land politically designated as New York City to be the homeland of the Lenape (Lenapehoking) who were violently displaced as a result of European settler colonialism over the course of 400 years. The Lenape people remain closely connected with this land and are its rightful stewards. We also recognize that New York City has one of the largest urban Indigenous populations in the United States.



Symposium Overview

PANEL I: IDSov and Tribal Codes March 1, 2023: 3:00 to 4:40 pm, EST

Break: 4:40-4:50 pm (EST)

PANEL II: Government Agencies & IDSov March 1, 2023: 4:50 to 6:30 pm, EST

PANEL III: Labels as Technical Protection Mechanisms March 2, 2023: 3:00 to 4:40 pm, EST

PANEL IV: Fair Use & IDSov March 2, 2023: 4:50 to 6:30 pm, EST

I.1 Stephanie Carroll (Dene/Ahtna) 3:00-3:15 pm (EST)

University of Arizona, Public Health, Udall Center for Studies in Public Policy, and the Native Nations Institute

I.2 Libby Liggins 3:15-3:30 pm (EST)

Massey University, Zoology and Ecology

I.3 Ibrahim Garba (Karai-Karai) 3:30-3:45 pm (EST)

University Arizona, College of Public Health and the Native Nations Institute

I.4 Rodney Haring (Seneca Nation) 3:45-4:00 pm (EST)

Roswell Park, Center for Indigenous Cancer Research

I.R Round Table Hosted by Carlos Andrés Baquero-Díaz 4:00-4:40 pm (EST)

NYU School of Law

II.1 Christopher Chaney (Seneca-Cayuga) 4:50-5:05 pm (EST)

Deputy Director, US DOJ Office of Tribal Justice

II. 2 Gwen Phillips (Ktunaxa) 5:05-5:20 pm (EST)

B.C. First Nations' Data Governance Initiative

II.3 Bobby Saunkeah (Chickasaw) 5:20-5:35 pm (EST)

Director, Division of Research and Public Health Chair, Institutional Review Board Chickasaw Nation Department of Health

II. 4 Katharina Ruckstuhl (Ngāi Tahu, Rangitāne) 5:35-5:50 pm (EST)

University of Otago Business School

II.R Round Table Hosted by Jason Schultz 5:50-6:30 pm (EST)

NYU School of Law

III.1 Jane Anderson 3:00-3:15 pm (EST)

NYU, Anthropology and Museum Studies and Engelberg Center for Innovation Law and Policy

III.2 Jason Mika (Tūhoe) 3:15-3:30 pm (EST)

University of Waikato, Management & Marketing

III.3 Megan Keenan 3:30-3:45 pm (EST)

Information Dignity Alliance

III.4 Māui Hudson (Whakatōhea) 3:45-4:00 pm (EST)

University of Waikato, Te Kotahi Research Institute; NYU Engelberg Center for Innovation Law and Policy

III.R Round Table Hosted by Florencia Marotta-Wurgler 4:00-4:40 pm (EST)

NYU School of Law

Break: 4:40-4:50 pm (EST)

IV.1 Krystal Tsosie (Diné/Navajo) 4:50-5:05 pm (EST)

Arizona State University, College of Agriculture & Life Sciences

IV.2 Keolu Fox (Kānaka Maoli) 5:05-5:20 pm (EST)

UC San Diego, Anthropology, Global Health & Indigenous Futures Lab

IV.3 Greg Keenan & Andrew Grimm 5:20-5:50 pm (EST)

The Digital Justice Foundation and Jain Family Institute (Digital Ethics Fellow)

IV.R Round Table Hosted by Barton Beebe 5:50-6:30 pm (EST)

NYU School of Law

PANEL I: IDsov and Tribal Codes

March 1, 2023: 3:00 to 4:40 pm, EST

I.1 Stephanie Carroll (Dene/Ahtna) 3:00-3:15 pm (EST)

Assistant Professor, Public Health and American Indian Studies Graduate Program, Affiliate Faculty, College of Law, Acting Director and Assistant Research Professor, Udall Center for Studies in Public Policy, Associate Director, Native Nations Institute, Udall Center, Director, Collaboratory for Indigenous Data Governance, University of Arizona, Tuscon, Arizona, USA

Introductory Remarks

Indigenous People's Rights in Data: A Contribution towards Indigenous Research Sovereignty

Sovereignty has become a catch-cry for Indigenous advocates pushing for greater Indigenous self-determination and control across a range of domains that impact on Indigenous communities and Indigenous culture from Network Sovereignty to Food Sovereignty, Energy Sovereignty to Indigenous Data Sovereignty. The notion of Indigenous Research Sovereignty draws on the sovereignty discourse underpinning these initiatives and considers their application to the broader research environment. Our exploration of Indigenous Research Sovereignty, or self-determination in the context of research activities, has been focused on the relationship with Indigenous Data Sovereignty and efforts to describe Indigenous People's Rights in data. The rights described here were collated by an interdisciplinary team of Indigenous and settler researchers affiliated with the Collaboratory for Indigenous Data Governance and/or the Global Indigenous Data Alliance. The rights are aligned with the Indigenous Data Sovereignty themes of Data for Governance and Governance of Data. Data for Governance primarily relates to the ability for Indigenous communities to access and use data themselves, while Governance of Data relates to the ability of Indigenous communities to influence the use of data by other external parties. Indigenous Peoples' rights in data provide a concrete step towards Indigenous Data Sovereignty by articulating specific rights that can be recognised to give effect to Indigenous Peoples' aspirations for control of data and self-determined research activities. Indigenous Data Sovereignty provides a platform to shape Indigenous narratives towards enabling Indigenous research agendas as an expression of Indigenous Research Sovereignty.

I.2 Libby Liggins 3:15-3:30 pm (EST)

Associate Professor in Zoology and Ecology, Massey University, Auckland, NZ

Maintaining the Indigenous provenance of Digital Sequence Information in support of Indigenous Data Sovereignty and benefit-sharing

Over the last decade advances in DNA sequencing technology have enabled the generation of Digital Sequence Information (DSI) for a larger number and breadth of organisms, providing unparalleled opportunities for these data to be used for biodiversity conservation, toward food security, and other benefits for humanity. The research community generating DSI have long had an open science approach to the publication these data. Repositories formed in the early 1980s for this purpose (i.e. International Nucleotide Sequence Database Collaboration, INSDC), now hold over 9 petabytes of DSI, growing by roughly 10 times every four years. Recognizing the vital importance of biodiversity to human well-being and the future of our planet, several international agreements strongly encourage the use and re-use of this DSI to help monitor and conserve wild and domesticated species and strains. This includes the Convention on Biological Diversity, in which it is also laid out (in article 15 and the attendant Nagoya Protocol) that benefits arising from genetic resources (such as DSI) discovered or accessed within a nation's sovereign borders should be shared with Indigenous Peoples. However, contextual metadata crucial for the re-use of DSI toward biodiversity objectives and identifying their provenance within national boundaries or the lands and waters of Indigenous Peoples is often missing. In this talk, I will convey the extent of missing provenance information for DSI currently held in the INSDC, and share some of the strategies the research community is taking, and tools being advocated, to remedy the issue and shift practice within the research community.

PANEL I: IDSov and Tribal Codes

March 1, 2023: 3:00 to 4:40 pm, EST

I.3 Ibrahim Garba (Karai-Karai) 3:30-3:45 pm (EST)

Assistant Research Professor, Native Nations Institute, University of Arizona, Tuscon, Arizona, USA

Tribal legislation and policymaking as exercises of data sovereignty: the case of US research governance

In contrast to other similarly situated CANZUS (Canada, Australia, New Zealand, United States) countries, the US lacks an integrated national-level law or policy governing research with Indigenous Peoples. Federal research oversight is implemented through the Common Rule, a legal standard based on the 3 Belmont Principles (respect, beneficence/non-maleficence, and justice). Designed as they were for individual participant protection and benefit, these Principles do not cover certain areas of concern for Indigenous Peoples as collectives. To address these gaps in collective protections and benefits, tribes – as sovereigns within the US – have passed legislation and developed policy to help ensure that their individual members as well as their communities participate in ethical and beneficial research.

This presentation will discuss findings from an analysis of research governance documents from 20+ US tribes. The analysis uses a grounded theory approach and legal epidemiology to map the terrain of tribal expectations for ethical and beneficial research with Indigenous Peoples. The findings fall under 13 broad categories that include jurisdiction, community engagement, values/culture/religion/spirituality, ownership and control, intellectual property, and prepublication review. The talk will focus on findings that show how tribes exercise their sovereignty through legislation and policy to foster research in their communities that advances collective self-determination.

I.4 Rodney Haring (Seneca Nation) 3:45-4:00 pm (EST)

Director, Roswell Park Center for Indigenous Cancer Research, Research faculty, Roswell Park Comprehensive Cancer Center's Office of Community Outreach and Engagement, Department of Cancer Prevention and Control, Buffalo, New York, USA Adjunct faculty at the Native American Research and Training Center, University of Arizona

Expanding Indigenous Research Protocols: Pandemic Genomics, Sovereignty, and Data User Agreements

The COVID-19 pandemic impacted Indigenous communities worldwide. In this emergency state, many Indigenous Nations contracted with commercial entities and other organization types to conduct rapid diagnostic and antibody testing. They also partnered with public-private enterprises on clinical trials to further the development of vaccines. Indigenous people contributed biological samples for assessment and, in many cases, broadly consented for indefinite use for future genomics research placing Indigenous communities in a position to forego critical review of data use agreement (DUA) by Indigenous governances. In response, a DUA template was created by the Center for Indigenous Cancer Research team at Roswell Park, alongside a cohort of Indigenous attorneys, vetted by a US-based cancer center's legal department, with final approval coming from an inter-tribal community advisory board. Traditional stories of transparency, paired with DUA overview, provides a storyline and template for attendees interested in DUA process with and for tribes, bands, iwis, universities, and cancer centers. A DUA template will be provided to attendees for review, adaptation, and use towards past and prospective work with Indigenous peoples, populations, and governance.

I.R Round Table Hosted by Carlos Andrés Baquero-Díaz 4:00-4:40 pm (EST)

JSD Candidate, NYU School of Law, New York, New York, USA

PANEL II: Government Agencies & IDSov

March 1, 2023: 4:50 to 6:30 pm, EST

II.1 Chris Cheney (Seneca-Cayuga) 4:50-5:05 pm (EST)

Deputy Directory, Office of Tribal Justice, United States Dept. of Justice, Washington D.C., USA

Supporting Indigenous Data Sovereignty in the Field of Criminal Justice

The US Department of Justice supports Indigenous Data Sovereignty through the Tribal Access Program and other efforts that allow Tribes to share criminal justice data in a way that is consistent with Tribal law and policy. Tribal criminal justice data is used to improve public safety in Indian country and throughout the US. The real world impact of relevant portions of the Tribal Law and Order Act of 2010 and the Violence Against Women Act Reauthorization of 2022 will also be discussed.

II.2 Gwen Phillips (Ktunaxa) 5:05-5:20 pm (EST)

Indigenous Services Canada, First Nations Information Governance Center, Member of the First Nations Health Council, British Columbia, Canada

Indigenous Data Ownership and Control: Individual and Collective Rights

On June 21, 2021 Canada has passed legislation recognizing the United Nations Declaration on the Rights of Indigenous Peoples; British Columbia passed legislation to this affect in 2019. Both jurisdictions have now committed to acknowledging the rights articulated in this global declaration. Gwen Phillips, Ktunaxa Nation Citizen and BC First Nations Data Governance Initiative Champion, will discuss the relationship between Data Sovereignty, Data Governance and Data, Records and Information Management, in the context of the implementation of UNDRIPA and DRIPA in Canada.

II.3 Bobby Saunkeah (Chickasaw) 5:20-5:35 pm (EST)

Director, Division of Research and Public Health Chair, Institutional Review Board Chickasaw Nation Department of Health, Ada, Oklahoma, USA

Extending Research Protections to Tribal Communities

The history of research in American Indian/Alaska Native (AI/AN) communities has been marked by unethical practices, resulting in mistrust and reluctance to participate in research. Harms are not limited to individual persons – tribal communities experience harmful misrepresentation and generalizations disrespectful of AI/AN groups' heritage, cultures, and beliefs. The Belmont Report's research ethics principles are applied primarily to protect individual research participants. The principles of sovereignty and solidarity are argued to be important in extending Belmont's research protections to tribal communities. Sovereignty, an expression of respect for autonomy at a group level, recognizes the importance of tribal self-determination. The principle of solidarity provides an ethical underpinning for tribes' obligations to protect community interests and culture. Extension of Belmont through these principles should serve to minimize harms to AI/AN groups in research.

PANEL II: Government Agencies & ID Sov

March 1, 2023: 4:50 to 6:30 pm, EST

II.4 Katharina Ruckstuhl (Ngāi Tahu, Rangitāne) 5:35-5:50 pm (EST)

Dean and Professor, Business School, University of Otago, Otago, NZ

Data is a taonga: Aotearoa New Zealand, Māori Data Sovereignty and implications for protection of treasures.

Issues of sovereignty are deeply ingrained in settler colonial nations like Aotearoa New Zealand. Data sovereignty, while universal in scope has particularities for Indigenous peoples, reflective of colonial pasts carrying on into settler colonial presents. The flash point in Aotearoa New Zealand has been around honouring the Treaty of Waitangi, signed between representatives of the British Crown and some iwi (tribes) in the 19th century but only being observed to some degree in the late 20th and early 21st centuries.

This brief overview provides the context for current policies about acknowledgement of Māori as having interests in, rights to, or ownership of taonga that today includes data about such treasures. Whether physical or intangible, taonga and the relationships inherent in them to Māori, continue to be a focus in Aotearoa New Zealand's policy landscape. What this implies as to the recognition, protection and the life of taonga as they transfer from physical or biophysical forms to data will be briefly touched upon in reference to taramea, a taonga of the presenter's tribal group of Ngāi Tahu

II.R Round Table Hosted by Jason Schultz 5:50-6:30 pm (EST)

Professor of Clinical Law, NYU School of Law, New York, New York, USA

PANEL III: Labels as Technical Protection Mechanisms

March 2, 2023: 3:00 to 4:40 pm, EST

III.1 Jane Anderson 3:00-3:15 pm (EST)

Associate Professor, Anthropology and Museum Studies and Engelberg Center for Innovation Law and Policy, NYU, New York, New York, USA

Introductory Remarks

Local Contexts: Metadata Interventions

Local Contexts was created 15 years ago to respond to the misalignments between Indigenous interests in knowledge and data protection and traditional intellectual property law. As an intervention at the level of metadata, the Traditional Knowledge and Biocultural Labels function to bring Indigenous provenance, protocols and permissions into knowledge and data sharing contexts, regardless of whether Indigenous communities are recognized as legal owners. This paper will focus on the Labels as a specific data sovereignty strategy and provide examples of use and implementation across multiple communities, institutions, jurisdictions and digital infrastructures.

III.2 Megan Keenan 3:15-3:30 pm (EST)

Attorney, Information Dignity Alliance, Portland, Oregon, USA

Copyright Management Information (CMI) and Indigenous Creative Works

There is a long history of creative works of Indigenous communities being removed from Indigenous land by people outside of the community. Through this removal, these works lose their ties to the communities and the works become decontextualized. Some Indigenous communities are starting to reclaim their association to these creative works. This talk will focus the CMI provision in the Digital Millennium Copyright Act (DMCA). It will discuss the history of the provision, the state of the law today, and how it can be used as a tool for indigenous communities utilizing technology in connection with creative works.

III.3 Jason Mika (Tūhoe) 3:30-3:45 pm (EST)

Associate Dean and Associate Professor, Te Raupapa Waikato Management School, Te Kotahi Research Institute, University of Waikato, in Hamilton, New Zealand

Indigenous business data: Challenges and opportunities

This paper is an essay on the challenges and opportunities of achieving the principles of Indigenous data sovereignty in the collection and use of Indigenous business data in official data systems. The paper uses Statistics New Zealand's (Stats NZ) review of Tatauranga Umanga Māori, that is, its framework for Māori business statistics and the definition of Māori business as a case study. The paper finds that Stats NZ's formation of a working group comprising Māori from various sectors demonstrates the efficacy of collaboration between tāngata whenua (Māori people of Aotearoa New Zealand) and officials to address a common cause—better Māori business data and the consequences for wellbeing (Duoba et al., 2022). This work was consistent with the kind of relations that were sought from higher level work underway in the department to co-design a Māori data governance model for official data (Statistics New Zealand, 2021; Te Kāhui Raraunga, 2022). The paper uses Treaty of Waitangi principles, Indigenous business theory, and Indigenous

PANEL III: Labels as Technical Protection Mechanisms

March 2, 2023: 3:00 to 4:40 pm, EST

III.4 Māui Hudson (Whakatōhea) 3:45-4:00 pm (EST)

Director Te Kotahi Research Institute, University of Waikato, Deputy Vice-Chancellor Māori, Hamilton, NZ

Using BC Labels to recognise Indigenous interests in Digital Sequence Information

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (2010) is a supplementary agreement to the 1992 Convention on Biological Diversity. The most recent Conference of Parties for the CBD was held in Montreal in Dec 2022 to discuss the inclusion of Digital Sequence Information within the Access and Benefit Sharing provisions of the Nagoya Protocol. Many countries fear that digitization of biological information and genomic technologies, combined with advances in synthetic biology and genome editing, enable users to bypass access and benefit sharing (ABS) systems. There are similar concerns that open access to data and adopting multilateral benefit sharing mechanisms will undermine the sovereign rights of Indigenous Peoples and Local Communities (IPLC). We discuss the application of BC Labels, through the Local Contexts Hub, to scientific collections and DSI as an approach that supports the recognition of Indigenous interests and implementation of the FAIR and CARE principles.

III.R Round Table Hosted by Florencia Marotta-Wurgler 4:00-4:40 pm (EST)

John M. Desmarais Professor of Intellectual Property Law, NYU School of Law, New York, New York, USA

PANEL IV: Fair Use & IDSov

March 2, 2023: 4:50 to 6:30 pm, EST

IV.1 Krystal Tsosie (Diné/Navajo) 4:50-5:05 pm (EST)

Assistant Professor, College of Agriculture & Life Sciences, Arizona State University, Tempe, Arizona, USA

Indigenous AI for Indigenous IP: Indigenous Data Sovereignty and Stewardship through Digital Data Tools

While there are many efforts to globally collectivize and harmonize genomic datasets into openly- and publicly accessible resources, it is important to acknowledge that much of the Earth's biodiversity is stewarded by Indigenous peoples. Therefore, one must not only ensure that Indigenous peoples equitably benefit from such research but that also that any research or innovations derived from genetically-associated Indigenous Knowledges (aIK) and wisdom are duly accredited to Indigenous peoples—a mechanism which may not be clear with open access rules. Therefore, we will design innovative policies and procedures to operationalize the CARE (community benefit, authority to control, responsibility and ethics) principles while still facilitating data sharing and access that respects Indigenous data sovereignty through Tribally-directed legal mechanisms (e.g., Tribal resolutions, Tribal patenting and copyrighting, memoranda of agreements, data sharing agreements under Bayh-Dole, international agreements such as the Nagoya Protocol) and data solutions (blockchain, federated systems, biocultural labeling).

IV.2 Keolu Fox (Kānaka Maoli) 5:05-5:20 pm (EST)

Assistant Professor, Department of Anthropology, and Indigenous Futures Lab, University of California, San Diego, La Jolla, California, USA

Indigenous Data Futures: Disrupting The Precision Medicine Supply Chain

According to The Economist, in 2018 oil was the most-traded commodity in the world. But in 2019, the demand for oil had been surpassed by the demand for data, including digital sequence information (DSI) of genetic resources. Despite increasing enthusiasm for historically marginalized communities' participation in biomedical research and a recognition of the potential for next-generation precision medicine, concerns around control and access of data derived from these populations remain. This lecture will highlight the emergence of new tools to enable equitable Indigenous data futures. Specifically it will explore key paths forward that are not only rooted in Indigenous Data Sovereignty (IDS), but circular economic systems, and place-based innovation. It will also highlight the potential for vertical integration and control of stacks of technology, including dynamic consent, data trusts, digital ledger systems, federated learning, and cloud computation to empower Indigenous communities for generations to come.

IV.3 Greg Keenan^{1,2} & Andrew Grimm¹ 5:20-5:50 pm (EST)

(1) The Digital Justice Foundation, Omaha, Nebraska, USA, (2) Jain Family Institute (Digital Ethics Fellow), New York, New York, USA

Reexamining Fair Use and Authorship in the Context of Indigenous Culture

This talk takes a back-to-basics look at a few fundamental features of U.S. copyright law (e.g. authorship, joint-authorship, fixation, and termination rights) to reveal the ways in which these central legal doctrines have been misunderstood, misused and misapplied to exploit indigenous culture. The talk then examines the ways in which clarifying these doctrines helps to ensure respect for tribal sovereignty, tribal persons and tribal cultures. Accordingly, copyright law offers several promising, albeit currently underutilized, avenues for protecting and preserving indigenous culture and for empowering indigenous peoples with copyright control and ownership over the uses of that culture.

IV.R Round Table Hosted by Barton Beebe 5:50-6:30 pm (EST)

Boxer Family Professor of Law, NYU School of Law, New York, New York, USA