

OCEAN

OPEN COPYRIGHT EDUCATION
ADVISORY NETWORK

**Traditional Knowledge, Traditional Cultural Expressions, and
Other Rights and Interests Relating to Collections**

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Welcome!

Tech Support:

Need help? Send us a note in the chat.

Sound:

Your microphone is muted. You may hear silence until the class starts. Use the chat box for questions and comments.

Slides:

You will receive a handout of the slides and a link to the recording after class.

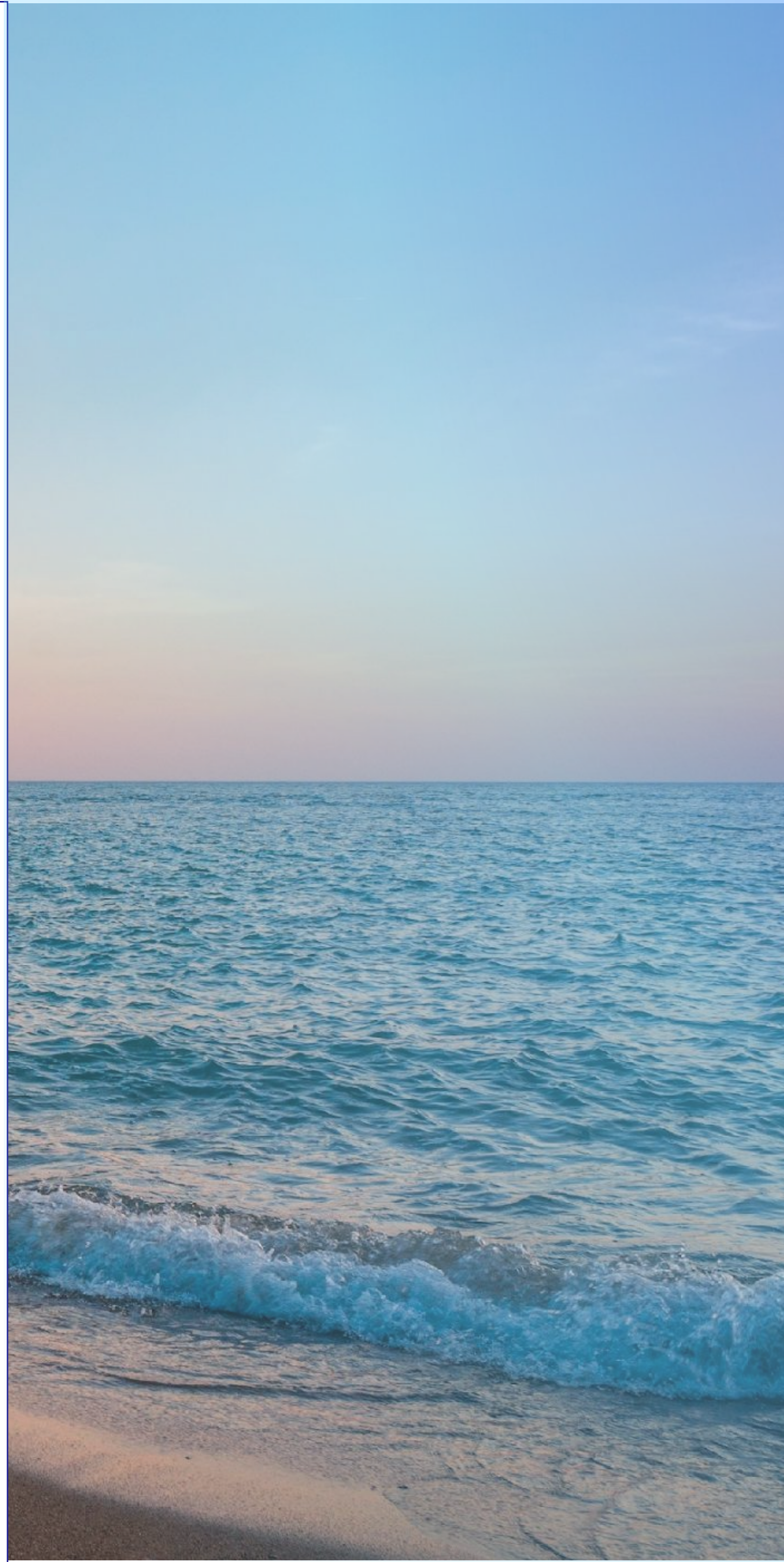
Recordings and Resources:

Visit oceancopyright.org for more resources or learn about upcoming workshops, discussions, and programs.

ABOUT US

Open Copyright Education Advisory Network

OCEAN aims to address **points of convergence** where copyright issues impact day-to-day and strategic decisions across museums, libraries, archives, research, scholarship, and education.



OUR VISION

To inform and empower the cultural heritage community in recognizing that copyright and related issues are foundational to navigating our networked digital world.

oceancopyright.org

Visit Our Website:

<http://oceancopyright.org>

**To learn about OCEAN, our learning events and
community building activities**

Agenda and Learning Objectives

Overview of

- Traditional knowledge
- Traditional cultural expressions
- Other rights and interests relating to collections
- Live Q&A



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What are Traditional Knowledge and Traditional Cultural Expressions?

TK & TCE Defined

Traditional Knowledge

Traditional knowledge (TK) is knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

Traditional Cultural Expressions

Traditional cultural expressions (TCEs), also called "expressions of folklore", may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions.

Intellectual Property

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

Source: WIPO.int

Institutional Holdings of Indigenous TK & TCEs

Voices (Song, Oral History, etc.)

- 100,000 Indiana University Archives of Traditional Music
- 30,000 Columbia University
- 10,000 Library of Congress
- 10,000 Cleveland NHM
- 6,000 Dorris Duke OH Collection

Representations (Photographs, etc.)

- 300,000 Smithsonian NMAI
- 534,000 Canada Reciprocal Research Network
- 40,000 Cleveland
- 18,000 Bureau of Indian Affairs
- 17,000 Library of Congress

Culturally Expressive Objects

- 8,000,000 Peabody Museum
- 825,000 National Museum of Am. Ind.
- 70,000 Chicago Field Museum
- 47,000 Am. Museum of Nat. Hist.
- 36,000 Heard Museum
- 10,000 Eiteljorg Museum

When Can Tribal Nations Control Uses of Their TK & TCEs?

- (1) When Tribe has a TK/TCE law, and non-member activity involving TK/TCE occurs **on a reservation** (ex: Pascua Yaqui Tribal Code)
 - On Tribally owned lands: presumption of Tribal jurisdiction
 - On non-member-owned land:
 - Non-member entered into “**consensual relationship**” with tribe OR
 - Non-member conduct “**threatens or has some direct effect**” on economic security, political integrity, health & welfare of Tribe
- (2) **Tribal law** provides a TK/TCE right and **federal law** provides a remedy (ex: NAGPRA)
- (3) **Federal statute** or **treaty** provides right & remedy (ex: Copyright Act)
- (4) **Private agreement or institutional policy**, if not contrary to public policy (ex: PNAM, APS)

(1) Tribal Law - Example: Pascua Yaqui Tribal Code

The **Pascua Yaqui Tribal Code Title VII** §§ 200-210 prohibits:

- Disturbing, excavating, or desecrating traditional Indigenous IPs
- Conducting unauthorized research, collecting, filming of traditional Indigenous IPs
- Selling, purchasing, receiving Indigenous IPs illegally acquired.

The code authorizes civil damages awards for violations, including “cost of restoration and repair” and “costs associate with the culturally appropriate disposition of resources.”

Types of TK and TCEs covered include:

- knowledge of remembered histories
- details of cultural sites and landscapes, sacred property like sounds, culture, images
- knowledge of uses of plant and animal species, and
- knowledge of their Indigenous language

Some Tribes laws may be unwritten, so be sure to check with Tribal officials about where to find laws regarding TK/TCEs.

(2) NAGPRA?

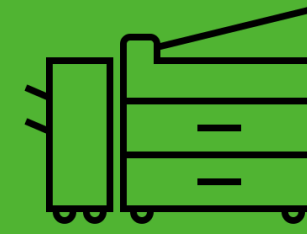
- Provides federal right to demand the “expeditious[] return” of categories of objects once “owned or controlled” by Tribes from a museum (i.e., federally funded institution) or federal agency that does not hold proper “right of possession.” 25 U.S.C. § 3005(a)(5), (c).
- Applicable **categories of objects**:

Sacred Objects – § 3001(3)(C).	Cultural Patrimony - § 3001(3)(D).
“[S]pecific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.”	Objects “having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself” and, according to tribal law or custom, “cannot be alienated, appropriated, or conveyed by any individual.”

- Could NAGPRA apply to **copies** of sound recordings, images, or other objects that might qualify as “Sacred Objects” or “Objects of Cultural Patrimony”?

(3) Copyright

A copyright is a **TEMPORARY & LIMITED RIGHT** to keep others from using a covered **WORK** by:



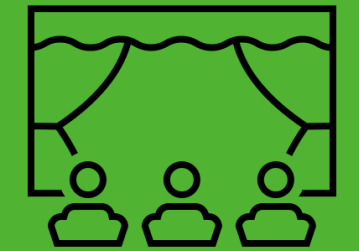
Copying



Creating Derivative Works



Distributing



Publicly Performing, Displaying, Streaming

Limited Scope (U.S.)



Original to the Author



Fixed in a tangible medium

Expression

VS

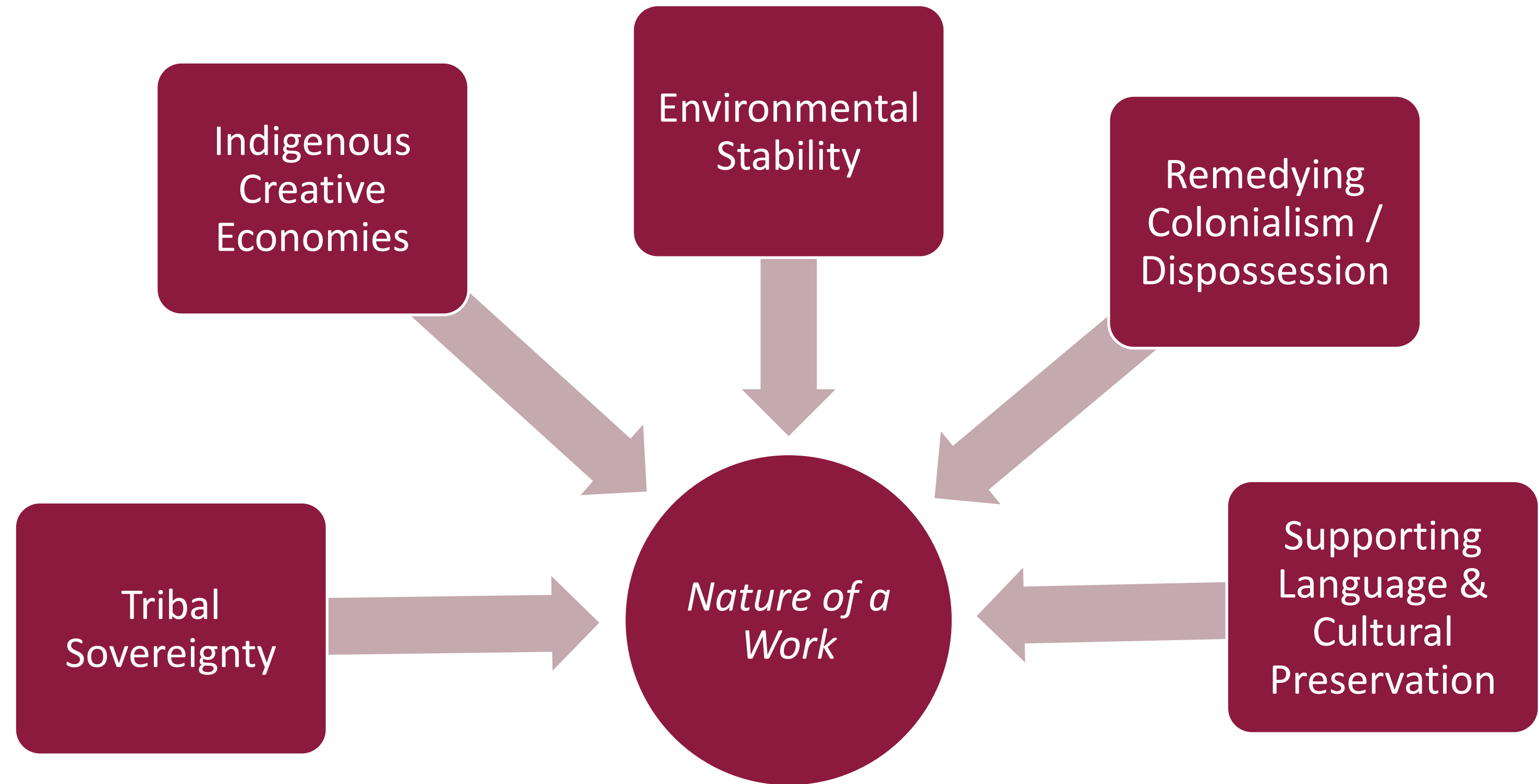
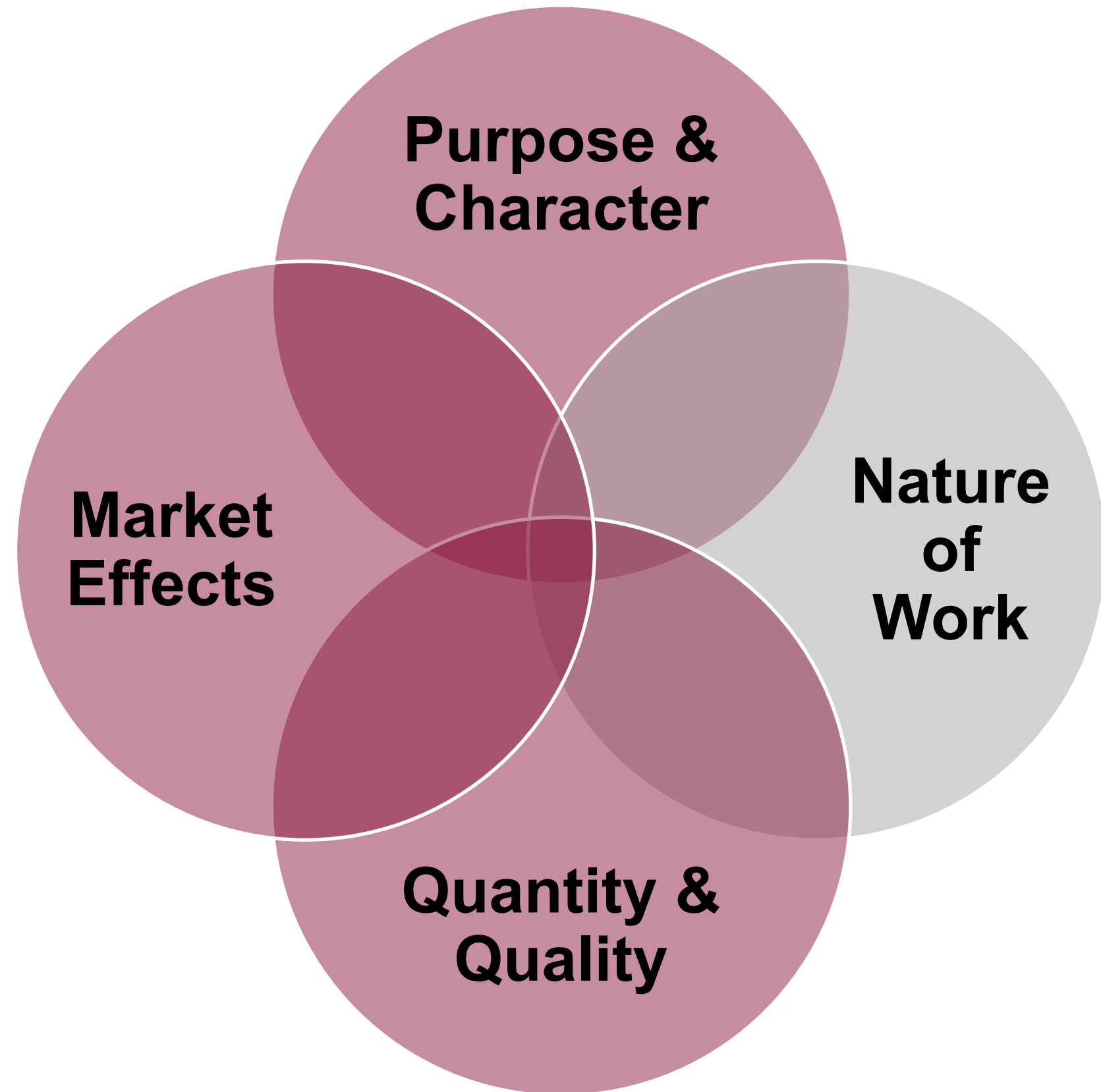
~~ideas~~

No facts, ideas, systems histories, etc.

Limited Remedies (U.S.):

- **Damages**
 - Actual
 - Statutory
 - Nonprofit institution exception.
- **Injunctions**
 - Limited by 4-factor test
- **Other**
 - Attorneys fees, impoundment, etc.

Fair Use?



Grapppling with Our Collections

Collections/collecting practices

- What are we collecting?
- Why are we collecting?

Homeland Security seizes stolen South
Asian artifacts at Yale art gallery

Millions in looted antiquities seized from Metropolitan
Museum of Art

Collections/collecting practices



College President Sparks Controversy by Taking Down Blackface Photos

By Alexander C. Kafka | APRIL 03, 2019



Records from controversial twin study sealed at Yale until 2065



Why These Early Images of American Slavery Have Led to a Lawsuit Against Harvard

Tamara Lanier claims the university has profited off the images of her ancestors

Collections/collecting practices

Outcry prompts withdrawal of Native American artifacts from Medford library auction



**Medford
Public
Library**



British Exhibitions of Ethiopian Manuscripts Prompt Questions About Repatriation



Stolen Artifacts Unwittingly Acquired By Boston Public Library Returned To Italy

How do we move forward?

- Digital Repatriation
- Physical Repatriation
- Both



THE PASSAMAQUODDY RECLAIM THEIR CULTURE THROUGH DIGITAL REPATRIATION



Return of Mohegan elder's diaries to help revitalize language

How do we move forward?

- **Thoughtful Collecting**
- **Digitization/Preservation**
- **Conversations**
- **Community connections**
- **Context**
- **Repatriation**
 - **Digital/Physical**
- **Limited/Restricted Access**

Thank You!

A series of overlapping, wavy blue lines that create a sense of movement and depth across the middle of the slide.

Questions? Email: copyright@columbia.edu

For more resources: Visit oceancopyright.org