

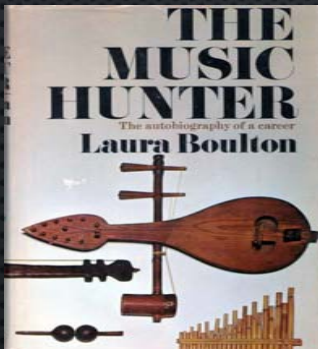
Cultural Expression, Copyright & Tribal Sovereignty

Trevor Reed | Indigenous Peoples & IP Webinar | September 2020

HOPI TRIBE CULTURAL PROPERTY RESOLUTION

- “BE IT FURTHER RESOLVED BY THE HOPI TRIBAL COUNCIL THAT ARCHIVAL RECORDS, INCLUDING FIELD NOTES, AUDIO TAPES, VIDEO TAPES, PHOTOGRAPHS, WHICH DESCRIBE AND DEPICT ESOTERIC RITUAL, CEREMONIAL AND RELIGIOUS KNOWLEDGE . . . ARE DECLARED TO BE THE CULTURAL PROPERTY OF THE HOPI PEOPLE.”


HOPI TRIBE, RESOLUTION H-70-94 (1994)



“The Hopis . . . have always been very reluctant to part with their songs . . . Before I had been with them twenty-four hours, I was recording. By the time I left, I had recorded songs from their most sacred rituals . . . I set up the recording gear and captured melodies which had never been recorded before.”

– Laura Boulton, *THE MUSIC HUNTER* (1968)

COPYRIGHT AND RECORDED SOUND

	Musical Work (design of the song)	Sound Recording (recorded performance)
Can exclude others from:	<ul style="list-style-type: none"> • Copying • Modifying or Converting to a new form • Selling/Distributing • Publicly Performing (Radio, Streaming) 	<ul style="list-style-type: none"> • Making exact copies of a recording • Remixing/Sampling of original recording • Sale/Distribution • Digital Streaming 
BUT, no permission is required for:	<ul style="list-style-type: none"> • § 108 - Archival preservation, security, replacement or for research purposes when in last 20 years of copyright. • Fair Use (especially when "transformative"; nonprofit education) 	<ul style="list-style-type: none"> • Public Performance (except digital streaming) • § 108 - Archival preservation, security, replacement; small part (or entire work when not available for fair price) for private study/research • Fair use • MMA Safe Harbor

COPYRIGHT'S DISRUPTIONS TO HOPI CREATIVITY



Disembodiment ("fixation")



Abstraction ("work of authorship")



Privatization of Creativity



Temporal Limitations



Distinguishing between Idea / Expression



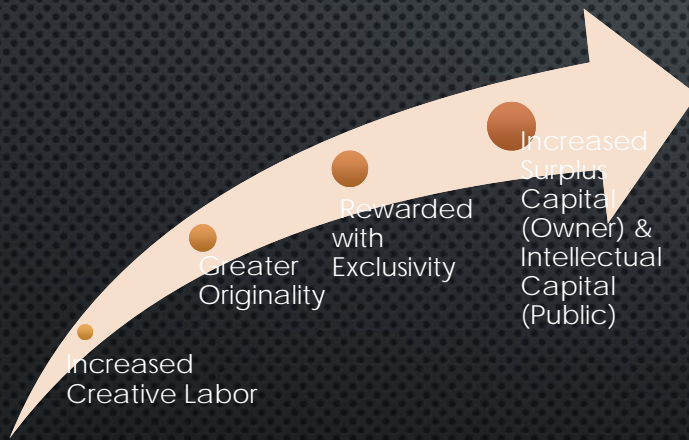
Exceptions to Exclusive Rights: fair use, archival preservation, etc.



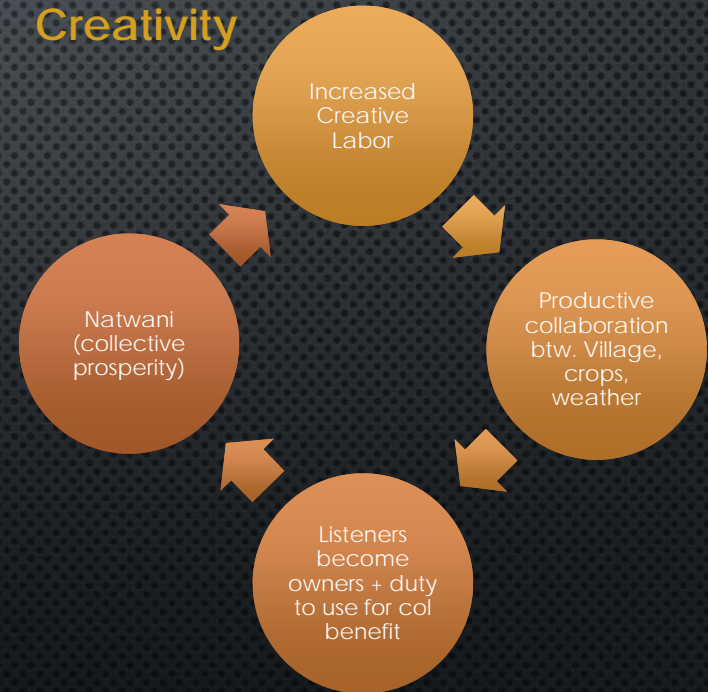
Free Alienation and Recontextualization of creative material ("first sale doctrine")

PRIVATIZATION OF CREATIVITY

Copyright's Creative Model: Incentivizing Individual Authors



Hopi Creative Model: Incentivizing Collective-oriented Creativity



PROPOSAL: APPLYING COPYRIGHT ON TRIBAL LANDS

- TRIBAL SOVEREIGNS SHOULD DETERMINE WHETHER COPYRIGHT APPLIES WITHIN THEIR TERRITORIES.
- WHERE TRIBES HAVE NOT DETERMINED THE APPLICABILITY OF THE COPYRIGHT ACT WITHIN THEIR TERRITORIES, THE FOLLOWING DEFAULT RULES SHOULD APPLY:
 - COPYRIGHT SHOULD NOT APPLY TO WORKS INTENDED TO CIRCULATE ONLY WITHIN TRIBAL LANDS; INSTEAD, TRIBAL LAW, PROTOCOLS AND OWNERSHIP PRINCIPLES SHOULD APPLY.
 - COPYRIGHT SHOULD APPLY TO WORKS INTENDED TO CIRCULATE BEYOND TRIBAL BORDERS, OR TO WORKS WHICH ARE IMPORTED ONTO TRIBAL LANDS.
- TRIBES AND THE UNITED STATES SHOULD ENTER INTO GOVERNMENT-TO-GOVERNMENT AGREEMENTS DETERMINING WHEN COPYRIGHT SHOULD APPLY TO THE TRIBE AND ITS MEMBERSHIP, AND WHEN TRIBAL LAW SHOULD APPLY OFF OF TRIBAL LANDS.

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