

Dylan Lorenz

### Abstract

Photographs, audio recordings and moving image materials documenting traditional knowledge of indigenous communities, inherently have potential for reproduction and laws of intellectual property that complicate the right granted to indigenous people “to maintain, control, protect and develop” in the 2008 UN Declaration of Indigenous People. The use of Traditional Knowledge Licenses and Labels, as put forth by Jane Anderson and Kim Christen in their 2013 essay “Chuck a Copyright on It: Dilemmas of Digital Return” provide a desired combination of a system of control over intellectual property and materials, without solely relying on rigid application and implementation of intellectual property law. As a case study of a moving image work where these a TK License and a TK Label could be applied, the 1923 silent film *The Shalako Ceremony at Zuni, New Mexico* and revisited new version of the film made in 2013.

“Indigenous peoples lives and cultural practices were [...] documented and recorded to a remarkable degree. Framed as the “subjects” of these works, not as their authors and owners, Indigenous people and communities have had no legal rights to determine how and when this documentary material should be accessed or by whom - that is, they cannot just “chuck a copyright on it.”

– Jane Anderson, Kim Christen essay in *Museum Anthropology Review*, “Chuck a Copyright on It: Dilemmas of Digital Return”<sup>1</sup>

“As we develop these systems for sharing and moving knowledge, they should be based first locally using our systems of permissions and control and so on. Its not a perfect thing, but it is as close to being biological rather than being legislative.”

- Jim Enoté, January 19, 2012 keynote from *After the Return: Digital Repatriation and the Circulation of Indigenous Knowledge* at the National Museum of Natural History, Smithsonian Institution<sup>2</sup>

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<sup>1</sup> Anderson and Christen. “Chuck a Copyright on It,” p. 106

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Jim Enote, director of A:shiwi A:wan Museum and Heritage Center (AAMHC) in Zuni, New Mexico gave the keynote address for a multiple day workshop entitled *After the Return: Digital Repatriation and the Circulation of Indigenous Knowledge* at the Smithsonian Institution's National Museum of Natural History. Enote noted that after his own personal inquiry into history of his grandparents in France and England, where historical records about them reside, "access to knowledge has certain permissions." In France, he found information was limited those who understood French or that there were requirements that researchers had academic references. In England, he felt access was restricted at the former Royal Air Force station, Ridgewell Field until he gave specific information about grandfather when as was a tail gunner on B17 bomber near the end of WWII. When he provided his grandfather's specific squadron information, Enote said "it seemed like I was using an access code." He was able to get the information he was seeking "with that access code through that social process". Enote related that experience of groups in France and England of having controls, procedures, and processes in order to access information as not being that different from processes that many indigenous or tribal communities have<sup>3</sup>.

Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples states "[i]ndigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions," and "they also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions"<sup>4</sup>. With

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<sup>2</sup> Enote, Jim. *After the Return* keynote address, 55:20

<sup>3</sup> Enote, Jim. *After the Return* keynote address, 18:10

<sup>4</sup> *UN Declaration on the Rights of Indigenous Peoples*, 2008, p. 11

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photographs, audio recordings and moving image materials containing documentation of native communities and culture, the “right to maintain, control, protect and develop intellectual property” becomes complicated by both the technological capabilities of the mediums and by the laws of intellectual property governing institutions and individuals that hold the material. Traditional Knowledge (TK) Licenses and TK Labels, as put forth by Jane Anderson and Kim Christen in their 2013 essay in *Museum Anthropology Review* “Chuck a Copyright on It: Dilemmas of Digital Return” provide a framework to address control over native community intellectual property and the material documenting it. Both Anderson and Christen attended the *After the Return* workshop in 2012 (Christen was one of the organizers). Following the keynote, they asked Enote questions about copyright in museums and sharing and ownership of materials held in collections. TK licenses and TK labels were discussed as part of their then emerging collaboration. Enote responded to questions about copyright by stating his thoughts on it haven’t been completely worked out, but stated “intellectual property,[...] that is a system we have to buy into. We never had that system of ownership before.” Referring to a Zuni custom of “partitioning” of knowledge and “controlled guardianship” which he focused his keynote on, “that more biological, social process has worked so well for us in the past.”<sup>5</sup> But he did acknowledge that the thinking about these issues at Zuni is “fluid.”

One case of a moving image work where these a TK License and a TK Label could be applied, is 1923 silent film *Shalako Ceremony at Zuni, New Mexico*. The American Museum of Natural History (AMNH) commissioned the film in 1923 and in 2013 a new version of

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<sup>5</sup> Enote, Jim. *After the Return* keynote address, 51:15

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the film was created in a collaboration between the AMNH and members of the Zuni tribal community. Jim Enote had a direct involvement with the creation of the new version of the *Shalako* film and versions of the film reside at the AMNH and the AAMHC at Zuni.

The original 1923 silent film *Shalako Ceremony at Zuni, New Mexico* depicts portions of a significant annual Zuni ceremony that centers on the winter solstice, but is prepared for throughout the year. The ceremony is not intended for viewing by non-Zunis and aspects within the ceremony contain knowledge only intended for Shalako participants who have gone through certain group initiations. In recent years, there has been an ongoing dialogue between representatives of Zuni and the AMNH regarding many Zuni identified artifacts residing within the museum's collection from physical artifacts and films produced in 1923. The *Shalako* film has become part of this dialogue.

On Saturday October 19<sup>th</sup> 2013, the AMNH held a program entitled "Setting the Record Straight" as part of the *Mead Dialogues* section of the 2013 Margaret Mead Film Festival. The new version of *The Shalako Ceremony at Zuni, New Mexico* was screened, followed by a panel lead by Jim Enote. The panel consisted of Octavius Seowtewa and Curtis Quam from Zuni and Dr. Peter Whiteley, curator of North American Ethnology and Barbara Mathé, head of the libraries and special collections and archivist at AMNH. Everyone on the panel participated in the creation of the new version of the film to some degree. The screening was open to the general public and additional participants in the new version's creation were in attendance. As part of an ongoing dialogue between the Zuni community and AMNH, the new version corrects inaccuracies within the original 1923 film which as well as to remove depictions of the ceremony considered restricted only to

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Zuni participants who have met certain group initiations. Enote stated at the screening that the hope of the Zuni collaborators that this new version would only be screened while a Zuni tribe member was present in the room. In his words “much as we control knowledge at Zuni, a Zuni accompanying the film can control knowledge in real-time.”<sup>6</sup>

The new version of the film contains English sub-title text which acts as commentary on the original 1923 inter-titles. At the same time, a Zuni language voice-over audio track accompanies the original silent film footage. This voice-over is performed by Octavius Seowtewa, who heads of one of the medicine societies at Zuni. In the panel after the viewing, Seowtewa stated that his voice-over essentially was recorded in real time recording his reaction viewing the film. It acts as an additional commentary and a provides controlled explanation of the ceremony. It occasionally seems play asynchronously to the footage on screen and Seowtewa’s occasional breathes during the recording process remain present throughout the soundtrack of new version of *Shalako*.

After the screening, Enote started his questions with Barbara Mathé to prompt a discussion of the copyright ownership of the newly created *Shalako*. She responded that initially she felt that a shared copyright between all the collaborators was appropriate, but then took into consideration that all the new content was provided by members the Zuni while the role of AMNH was exclusively of coordinating conference calls or arraigning for in a technical assistance in the video creation. (The editor the new *Shalako* version, Rob O’Neil, who had worked at the AMNH as a Cultural Resource Manager was brought to the project by Mathé). Mathé stated that it was determined that the 1923 version of the film

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<sup>6</sup> Enote, Jim et al. *Settling the Record Straight*, 44:10

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was in the public domain. While clarifying she was not the final authority on the matter and that the discussion with the museum's General Council was ongoing, Mathé stated to Enote and Zuni members of the panel that as far as she was concerned, "the copyright is yours."<sup>7</sup>

Jane Anderson and Kimberly Christen begin their discussion on copyright in "Chuck a Copyright on It" by writing "[t]he notion that "a copyright"- or other types of legal frameworks -might aid in the preservation and protection of Indigenous cultural materials as they circulate outside of Indigenous communities in both their analog and digital forms is quite prevalent and also quite misunderstood by all parties involved". Anderson and Christen argue "traditional copyright," perhaps combined with something like Creative Commons licenses "form a complicated layer of legal scaffolding," providing "limited sets of rights to and over Indigenous cultural materials that constitute copyright subject matter." They conclude "[t]he very precarious legal position that many Indigenous peoples have to their cultural heritage materials, as well as the collective responsibilities of stewardship and care towards these materials, often limits the effective use of copyright law."<sup>8</sup>

Barbara Mathé, wrote in an October 2014 paper presented at Archives and Cultural Industries Conference in Girona<sup>9</sup>, that the original 1923 version of the film was never copyrighted. She writes the film was "made in 1923 by Owen Cattell, at the request of Clark Wissler, who was then chair of the AMNH Anthropology Department." The museum stores the original 35mm film reel in cold storage and in 2012, the museum received an NFPF grant to digitize the original film elements. Mathé writes "the original film is intact;

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<sup>7</sup> Enote, Jim et al. *Settling the Record Straight*, 26:30

<sup>8</sup> Anderson, and Christen, Kim, "Chuck it a Copyright," p. 109

<sup>9</sup> Mathé, Barbara, *Whose Pictures Are These*, p. 5

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unedited digital versions are held by the museum and by the Zuni. A U-Matic video copy of the film of it resides at the AMNH library archive and while some information about it is available in their online catalog material is not available through library loan and a note accompanies the catalog record to “contact AMNH Library Special Collections for terms of access.”<sup>10</sup> The A:shiwi A:wam Museum and Heritage Center website lists have restricted viewing to two of their fifteen films, presumably these are copies of the original and revised version of *Shalako*<sup>11</sup>. As far as the physical object of the 35mm reel, Mathé writes “the museum hired Cattell to make the film in 1923 and owns the original film reel.”<sup>12</sup>

So there are two versions of the film to consider as far as intellectual property is concerned, each with different creators, status in the public domain and carriers (the 35mm reel and its analog and digital copies). The newly created version, being a new work could have intellectual property law applied to in a more straightforward manner. The addition of the Zuni language voice-over and the sub-title text commentary, along with the editing, do make it an original work that could qualify for copyright protection. It appears that any services provided by the AMNH fall under the work-for-hire activities. The original work being created in 1923 and having never had any copyright protection does make the application of copyright difficult if not possible. As far US copyright is concerned it lies in the public domain. Considering the implementation of copyright law to control access both versions of the *Shalako*, the “limits of effective use of copyright law” that Anderson and

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<sup>10</sup> AMNH Library Catalog, <http://libcat1.amnh.org/search/eFilm+Collection+no.+263/efilm+collection+no++263/-5,1,1,B/frameset&FF=efilm+collection+no++273&1,1>

<sup>11</sup> AAMHC Film Archive, <http://www.ashiwi-museum.org/film.html>

<sup>12</sup> Mathé, Barbara, *Whose Pictures Are These*, p. 5

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Christen referred to comes to mind. One thing to address is the notion of what public domain means for the original version of *Shalako*.

Works that fall into public domain are generally defined by how copyright has expired or never applied to begin with. Laura (Lolly) Gasaway's chart "When Works Fall Into The Public Domain" from the University of North Carolina uses begins this definition:

"A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.<sup>13</sup>"

The US Copyright Office lists examples as to the range of how a work could fall into public domain in the US "including lack of proper notice, failure to renew, failure to comply with manufacturing requirements,[...], and lack of national eligibility, that is, the source nation and the United States did not then have a treaty relationship<sup>14</sup>." These two definitions only relate to US copyright law in relation to the public domain. The World Intellectual Property Organization's (WIPO) "Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore" has been working on a definition of public domain as in reference to Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE). A WIPO report from this committee in 2010 states "The public domain, in intellectual property (IP) law, is generally said to consist of intangible materials

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<sup>13</sup> Gasaway, Laura, <http://www.unc.edu/~unclng/public-d.htm>

<sup>14</sup> US Copyright Office, <http://www.copyright.gov/docs/domain.html>



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that are not subject to exclusive IP rights and which are, therefore, freely available to be used or exploited by any person.<sup>15</sup> It goes on to state:

“[T]he public domain is, however, an elastic, versatile and relative concept and is not susceptible to a uniform legal meaning. Its meaning and effect in IP theory are not yet well understood. The term rarely appears in legal texts and it is even rarer that specific rules are attached to it.”<sup>16</sup>

The WIPO report uses three “main foci” that “most definitions” of the public domain articulate: “the legal status of material, freedoms to use material, and the accessibility of material.” It uses Black’s Law Dictionary definition of public domain “ as an example:

‘[t]he universe of inventions and creative works that are not protected by intellectual property rights and are therefore available for anyone to use without charge. When copyright, trademark, patent, or trade-secret rights are lost or expire, the intellectual property they had protected becomes part of the public domain and can be appropriated by anyone without liability for infringement.’<sup>17</sup>”

In regards to native communities and the protection TK and TCE, the 2010 WIPO report states “from the perspective of indigenous peoples and local communities, the ‘public domain’ operates to exclude TK and TCEs from protection and can be used to justify their misappropriation.”<sup>18</sup> Jane Anderson in a 2010 essay written for the Center for the study of on Public Domain at Duke University acknowledges that “[a]dvocates for the public domain provide a much-needed counter- framework to understand the cultural and

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<sup>15</sup> WIPO. Seventeenth Session report, held December, 2010, p. 1

<sup>16</sup> WIPO. Seventeenth Session report, held December, 2010, p. 2

<sup>17</sup> Ibid, Annex, p. 1

<sup>18</sup> Ibid, p. 2

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economic effects of the monopoly privileges upheld through conventional intellectual property rights.<sup>19</sup> However, as far as work involving TK and TCEs, Anderson writes:

“[t]here are a range of reasons why indigenous knowledge issues cannot always be accommodated within this critical intellectual property discourse. In short, this is because the history and politics informing indigenous knowledge issues and the history and politics informing arguments for the public domain are not the same. Indigenous peoples’ historical exclusion from the broad category of ‘public’ feeds part of the differences in objectives.<sup>20</sup>”

Anderson continues with a statement that describes succinctly the issue regarding access to the 1923 *The Shalako Ceremony New Mexico* film:

“For indigenous peoples, contests over access to knowledge arise because of the historical conditions that meant that indigenous people lost control over how and what knowledge was to be circulated. When much of this material was made, there was no meaningful explanation about the extent of circulation, the potential uses and possible third party users.”<sup>21</sup>

In world where access to materials is becoming ever more prevalent and potential circulation of these materials becomes ever more possible, Anderson writes that public domain creates a concern because it:

“can also be interpreted as a culturally specific framework that reinforces the invisibility of past and ongoing indigenous peoples’ practices in regards to knowledge management – where certain kinds of knowledge have very specific rules governing access and circulation. To adequately deal with these differences, it may be best to understand indigenous peoples’ issues *vis a vis* the public domain as ones primarily about control and renegotiating culturally appropriate conditions for access.<sup>22</sup>”

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<sup>19</sup> Anderson, Jane. *Intellectual Property and Indigenous/Traditional Knowledge*, p. 25

<sup>20</sup> Anderson, Jane. *Intellectual Property and Indigenous/Traditional Knowledge*, p. 25

<sup>21</sup> Ibid

<sup>22</sup> Ibid, p. 26

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The 2010 WIPO report states in regards to the issues of TK and TCE in the public domain “a Traditional Knowledge Commons has been proposed.<sup>23</sup>” The WIPO report refers to a paper based on a “Traditional Knowledge Commons Workshop” held in Cape Town, South Africa in 2009 entitled *Implementing a Traditional Knowledge Commons*, principally authored by Elan Abrell. This paper defines the commons as “a resource that is controlled by a community using systematic rules that govern use of the resource<sup>24</sup>” In the fourth chapter entitled “The Commons Are Not In The Public Domain,” the paper considers examples of work which are “publicly available, but not in the public domain” such as a song played on the radio or ‘free software” which secured through a license. Abrell asserts that Traditional Knowledge “likewise is governed by traditional and customary law and is not in the public domain.” In comparison to other “knowledge commons, such as Creative Commons,” which “endeavor to facilitate access to knowledge by preventing its enclosure through [intellectual property rights],” Traditional Knowledge, in many cases, “is sensitive to enclosure – being permanently outed to the public domain – as it is to enclosure,” to intellectual property right.<sup>25</sup> Because so much TK and TCE are already publically available in publications and archives, Abrell states:

“[i]t is therefore essential that a TK Commons provides access to the use of TK strictly within the framework of customary law so as to avoid its enclosure into the public domain. In other words, the TK Commons would be a mechanism for providing regulated access to TK – albeit guided by the biocultural values of ILCs – not altogether free access.<sup>26</sup>”

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<sup>23</sup> WIPO. Seventeenth Session report, held December, 2010, p. 2

<sup>24</sup> Abrell, Elan. *Implementing A Traditional Knowledge Commons*, p. 13

<sup>25</sup> Ibid, p. 15

<sup>26</sup> Ibid

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Under the banner of “Mission,” the Creative Commons website states “Creative Commons helps you share your knowledge and creativity with the world.<sup>27</sup>” In the “About” section under “What is Creative Commons?,” the website states that “Creative Commons licenses provide a simple, standardized way to give the public permission to share and use your creative work - on conditions of your choice. [Creative Commons] licenses let you easily change your copyright terms from the default of “all rights reserved” to “some rights reserved.” The Creative Commons licensing framework utilizes copyright law to allow a copyright holder to license their work. It relies on contract law within the framework of copyright law. There is even a label “CC0” to place your work in the public domain – however the page for that tool admits “no tool, not even CC0, can guarantee a complete relinquishment of all copyright and database rights in every jurisdiction.”<sup>28</sup> As far as TK and TCE, Creative Commons could provide some sense of control over a copyright work. But they would only apply if copyright ownership was established in the first place. Additionally, Creative Commons only provides a framework to label a work as public domain, not how to define access to works within the public domain. Its framework is designed only to increase access to materials, using a request for attribution as the only interfacing with the content owner.

Anderson and Christen describe framework for dialogue over use of materials through the implementation of TK Licenses and TK labels. In “Chuck a Copyright on It”, they write “TK Licenses and Labels seek to fill a void left by current intellectual property regimes that fail to address the particular needs of Indigenous peoples in relation to their

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<sup>27</sup> Creative Commons, <http://creativecommons.org>

<sup>28</sup> Creative Commons, <http://creativecommons.org/about/cc0>

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cultural heritage materials.” Examining how Creative Commons uses rights granted under copyright law, Anderson and Christen developed “the idea for entirely different model of licenses and labels, combining a legal (licenses) and non-legal (labels) strategy for the complexity of Indigenous needs.<sup>29</sup>”

TK licenses are intended for situations where an individual owns copyright of the TK material. For scenarios where individual ownership is not desired or where control of ownership has been lost a TK Label can be used. TK Labels are not legally enforceable, but seek to “situate community-determined interpretations of what constitutes “fair” and equitable use at their core.” Anderson and Christen draw upon the analysis of Patricia Aufderheide and Peter Jaszi in *Reclaiming Fair Use*, the argument for what is “fair” needs to remain flexible “as social and cultural norms for what constitutes “fair” change over time and are often made in response to differently situated parties.<sup>30</sup>”

Both TK Licenses and TK Labels are “only designed for knowledge that has either already been made into a tangible form through recording and documenting, or that will be recorded and documented in the future.” Thus it is a framework that is similar to traditional copyright law and Creative Commons and not for “for knowledges that are unrecorded or not ever to be documented.” Anderson and Christen see TK Licenses and Labels as tools for the “cultural interface between Indigenous individuals and communities on the one hand and non- Indigenous peoples and third parties on the other,” to work to “extend the sets of internal ‘best practices,’ cultural norms and responsible behavior for

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<sup>29</sup> Anderson and Christen. “Chuck a Copyright on It,” p. 111

<sup>30</sup> Anderson and Christen. “Chuck a Copyright on It,” p. 117

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those outside the group.<sup>31</sup>” The decisions for who can create a license are left up to the “governing structure of each Indigenous local community.”

Setting the TK License and Label as tools to extend existing practices makes them a very attractive solution for the relationship between institutions committed to stewardship of TK and TCE material and indigenous or native communities. Traditional IP laws work with blunt concepts of ownership and control that can interrupt measures for dialogue undertaken by a museum like the AMNH and Zuni over the years. Leaving the license creation up to the “governing structure of each indigenous community,” speaks to an additional problem with implementation of copyright law. If the 2013 version of *Shalako* was only copyrighted by a member of the Zuni community, it could raise the issue of a Zuni infringing on the copyright by using the video without permission and how to settle that infringement - including deciding what court ought to be used to adjudicate the matter.

TK Licenses and TK labels bring the issue of control into a dialogue. It extends the “biological system” which Jim Enote referred to in his keynote for *After the Return* by engaging that dialogue over control over of knowledge. It also extends the ongoing dialogue between Zuni members and the AMNH over *Shalako*.

A website, [localcontacts.org](http://localcontacts.org) has been established for defining and assigning TK Licenses and Labels. It uses the tagline, “...because the ‘s’s matters,” speaking to the multiple contexts of material use and restrictions. Similar to [creativecommons.org](http://creativecommons.org), there are tabs to providing information to learn more about TK Knowledge, Licenses, and Labels [localcontext.org](http://localcontext.org) along with short video explanations of the concepts. An interactive

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<sup>31</sup> Ibid. p. 112

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demonstration of how to walk through the license generation process is explained through voice-over and a time-based decision-making flowchart (only the License flowchart was fully explained when the site was accessed on December 14, 2014).

Four licenses with corresponding icons are listed as “under development”: TK Commercial (TK C); TK Outreach (TK O); TK Non-Commercial (TK NC) and TK Attribution (TK A). Additionally ten labels under development with corresponding icons are listed: TK Commercial (TK C); TK Non-Commercial (TK NC); TK Men-Restricted (TKMR); TK Men General (TK MG); TK Women Restricted; TK Women General (TK WG); TK Secret/Sacred (TK SS); TK Community Only; TK Attribution (TK A); and TK Verified (TK V).

Under the tab “What is?” on localcontexts.org there are answers to topics from the procedural to legal. On the page “How would I know if the material I want to license is already legally owned?” a TK Legal Clinic is referred to, which “does not provide legal advice<sup>32</sup>” but could assist users in finding out who a copyright holder is and thus whether to choose a license or a label for the work. Under the page “Public Domain?” a succinct paragraph about public domain is provided:

“The public domain refers to material that can be used and exploited by everyone without authorization, and without the obligation to pay remuneration. This is because public domain material is no longer protected within copyright due to the expiry of their term of protection, or due to the absence of an international treaty ensuring protection for them in the given country, or if the conditions of protection are no longer fulfilled. The role, contours and boundaries of the public domain are under active discussion.”

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<sup>32</sup> Local Contexts, <http://www.localcontexts.org/content/how-would-i-know-if-material-i-want-license-already-legally-owned>

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The actual license generator was still under development when I accessed the site on December 14, 2014. This application of a license or a label is critical to TK License and TK Label implementation. Taking into consideration the site is a work in development, localcontexts.org is an excellent articulation of Anderson and Christen's framework for implementing TK Licenses and Labels. By way of illustrating how a TK License and a TK Label, I want walk through a possible application them to both versions of the *Shalako* film.

First, is how the 1923 version of the film. Being that it is, and really always has, been in the public domain a TK license wouldn't be possible. Licenses are only for works that have a copyright owner. Barbara Mathé writes that prior to the process of digitizing the U-Matic videotapes for online streaming, "the Museum has been faced with the importance of applying restrictions in the context of widespread world-wide-web distribution. It has been careful to avoid any possibility of placing secret or sacred material online for anyone to see." She describes a precedent from 1986 when the videotapes of the films were originally created. The catalog record was for a 1932 expedition to central Australia and went as follows:

"Due to the secret/sacred nature of ritual material seen in this film, the Australian Institute of Aboriginal Studies has requested that it carry a restricted use notice. Only advanced level students of anthropology and related studies may screen this film. Under no circumstance should it be seen by Aboriginal people, who would be prohibited from seeing it by traditional Aboriginal law and custom.<sup>33</sup>"

The catalog record citation reads like restrictions that could be written into a TK Label. The difference with a TK label for the 1923 *Shalako*, it could be generated from a tribal

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<sup>33</sup> Mathé, Barbara, *Whose Pictures Are These*, p. 6



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council at Zuni, who would be the TK holder. It could be a TK Secret/Sacred (TK SS) label that could define the restrictions on use of the material and it would clarify the fact that its “status it is not, and was never free, public and available for everyone at anytime.<sup>34</sup>” For the AMNH, this label would state clearly the wishes of the Zuni tribal council on all iterations of the 1923 film. This TK SS label could also be applied to the copy of the 1923 *Shalako* held at the Museum and Heritage Center in Zuni. That label could specify which members of the community can have access to the version of the film containing portions of the ceremony that ought not be viewed by non-initiated members of Zuni.

For the new version of the *Shalako*, the use of TK License and TK Label requires a few more considerations. First, any use of a TK License does not exclude the use of a TK Label. The new version of the *Shalako* film could have a TK Community Use Only (TK CO) or the label applied to it. This could articulate the wishes that it only be viewed when a Zuni is present in the room when shown to non-Zunis. This helps to provide the “control knowledge in real-time” which Jim Enote expressed in the *Setting the Record Straight* panel. In order to apply a TK License to this work, a copyright owner of the film would need to be established.

Because of the nature of copyright a “community” of owners couldn’t function as the authors. However, co-copyright owners could be designated as owners or some sort of legal entity could be considered the author. But this would place the new version of *Shalako* in a legal framework that could require a court to decide upon settling infringement cases. I think a TK License (and the necessary copyright) would only be necessary if the Zuni

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<sup>34</sup> Local Contexts, <http://www.localcontexts.org/node/22>

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community would like to have the new version of the *Shalako* film exhibited outside of the A:shiwi A:wana Museum and Heritage Center or to stream it online. Given the desire of having that version only be seen when a Zuni is in present, the TK Label would be an appropriate control over its access.

TK Licenses or TK Labels are not a panacea for controlling access. But establishing the TK Label over the works does articulate the intention of its use and invite dialogue with the Zuni community in relation to the *Shalako* films. In introducing this framework, Anderson and Christen write:

“we are seeking to introduce some productive “friction” into the system wherein non-local users of Indigenous knowledge and cultural heritage are asked to slow down, to dialogue, and to consider what fairness and equitable use from an Indigenous perspective constitutes.”

This seems to align with the “biological system” that Eno uses to describe the way knowledge is controlled at Zuni. It also establishes a method for permission of access control that he described encountering in at archives France and England. While not the same control as “owning” material, TK Licenses and TK Labels extend a dialogue between stewards of content and those who wish to control access to knowledge.

Copyright, Public Domain and Traditional Knowledge License and Traditional Knowledge Labels Regarding *The Shalako Ceremony at Zuni, New Mexico*

Dylan Lorenz

**References:**

*(All online resources were accessed on December 14, 2014)*

Abrell, Elan. *Implementing A Traditional Knowledge Commons: Opportunities And Challenges*, Natural Justice (2010): 1-45.

American Museum of Natural History Catalog.

<http://libcat1.amnh.org/search/eFilm+Collection+no.+263/efilm+collection+no++263/-5,1,1,B/frameset&FF=efilm+collection+no++273&1,1>

Anderson, Jane and Kimberly Christen. “Chuck a Copyright on it’: Dilemmas of Digital Return and the Possibilities for Traditional Knowledge Licenses and Labels,” *Museum Anthropology Review* 7 (1-2) Spring-Fall (2013): 105-126.

<http://scholarworks.iu.edu/journals/index.php/mar/article/view/2169>

Anderson, Jane. *Intellectual Property and Indigenous/Traditional Knowledge: Issues Paper*, Centre for the Study of the Public Domain, Law Faculty, Duke University, Durham, North Carolina (2010) 1-70. <http://web.law.duke.edu/cspd/itkpaper>

A:shiwi A:wam Museum and Heritage Center, <http://www.ashiwi-museum.org/film.html>

Creative Commons, <http://creativecommons.org>

Enote, Jim. *After the Return: Digital Repatriation and the Circulation of Indigenous Knowledge*, keynote delivered at the National Museum of Natural History, Smithsonian Institution, January 19, 2012. <http://digitalreturn.wsu.edu/workshop>

Enote, Jim et al. *Settling the Record Straight*, a panel as part of “Mead Dialogues” at the 2013 Margaret Mead Film Festival, October 19, 2013. <http://www.amnh.org/explore/news-blogs/podcasts/2013-margaret-mead-film-festival>

Gasaway, Laura. *When U.S. Works Pass Into The Public Domain*. <http://www.unc.edu/~unclng/public-d.htm>

Local Contexts, <http://www.localcontexts.org>

Mathé, Barbara. “Whose Pictures Are These? Indigenous Community Access And Control Of Digital Archives,” Paper presented at Archives and Cultural Industries Conference, Girona October 11-15<sup>th</sup>, 2014. <http://www.girona.cat/web/ica2014/eng/comunicacions.php>

United Nations. *United Nations Declaration on the Rights of Indigenous Peoples*, March 2008. [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

United States Copyright Office. <http://www.copyright.gov/docs/domain.html>

World Intellectual Property Organization: Secretariat, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

Seventeenth Session, Geneva held December 6 to 10, 2010.

[http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_17/wipo\\_grtkf\\_ic\\_17\\_inf\\_8.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_17/wipo_grtkf_ic_17_inf_8.pdf)