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23. Navigating Consent, Rights, and Intellectual Property (A, D, E)

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COLANG 2022

Navigating Consent, Rights & Intellectual Property

Susan Smythe Kung & Hilaria Cruz

Slides

bit.ly/nav-colang2022



Land Acknowledgement

The University of Montana acknowledges that we are in the aboriginal territories of the Salish and Kalispel people. Today, we honor the path they have always shown us in caring for this place for the generations to come.



Introductions

Hilaria Cruz

- Reading: ChaqF Ksyak 'Words of the Heart' (prayer) by Gonzalo Cruz Cortés

Susan Smythe Kung

Class introductions

- Name
- A skill you have (something that you do well)



Outline

Day 1:

- Introductions
- Traditional Knowledge
- Cultural (Mis)Appropriate

Day 2:

- Copyright
- Public Domain
- Fair use/ Fair Dealings

Day 3:

- Informed Consent
- MoUs

Day 4:

- Open Access Movement
- Creative Commons Licenses
- Wrap Up



Day 1:

- Introductions
- Traditional Knowledge
- Cultural (Mis)Appropriate



Activity: Brainstorm the Types of Things Created during Language Work

- See next slide



Miromaa Software:

acra.org.au/miromaa-software

→ used this software for CIMCC language apps

link: cimcc.org/education-center/cimcc-aboriginal-language-apps/

Verbal art poetry
Curriculum-immersion Schools

journal articles dictionaries

Grant proposals visual artwork

software scripts written oral stories

Story books

maps basket weaving

Children's books

beading recipes
carving names

PPI

Survey result

demographic info

audio/video

recordings of speech events

(Conversation, songs, music stories)

Ceremonial materials

(miniature funeral site materials protected information)

flash cards

translation

apps

games (physical or digital)

orthography

transcriptions

glosses

Brainstorm of the types of things created during language work. Created June 20, 2022 by workshop participants. Photo by Susan Kung. The Miromaa software notice in red in the upper left corner was NOT part of our brainstorming activity.



Traditional Knowledge (1 of 3)

"**Traditional knowledge (TK)** is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity"

(from the World Intellectual Property Organization's website:
<https://www.wipo.int/tk/en/tk/>).

Much TK is not (automatically) protected by IP law, which protects **economic** interests.

TK



Traditional Knowledge (2 of 3)

WIPO further divides TK into 3 types:

1. **Traditional knowledge** (strict sense): technical skills & know-how, esp. related to biodiversity, agriculture, health
2. **Genetic resources**: knowledge and practices regarding genetic material found in plants, animals, etc.
3. **Traditional cultural expressions (TCE, aka folklore)**: expressions of traditional culture, e.g. stories, songs, dance, music, art, designs, symbols, etc.

World Intellectual Property Organization (WIPO). No date. Traditional Knowledge and Intellectual Property – Background Brief. Accessed 19 May 2016 from http://www.wipo.int/pressroom/en/briefs/tk_ip.html)



Traditional Knowledge (3 of 3)

Also known as:

- Traditional Ecological Knowledge (TEK)
- (Intangible) Cultural Heritage
- Aboriginal Intangible Property
- Indigenous Intellectual Property



Protocols

Customary Laws / Protocols: Laws or rules that "dictate specific rights, responsibilities, and cultural obligations" in indigenous communities (IPinCH 2015, p. 5).

Protocols vary between communities.

"For this is no "ordinary" material. It is material that continues to be shaped by and understood within, the cultural and local contexts where people maintain the critical connection to these materials" (Anderson & Christen 2013: 113).

"It's nice to see older friends [referring to Karuk baskets in the Hearst Museum], but it's hard to leave them there." (Susan Gehr, CoLang Plenary, June 19, 2018)



Exchange of Cultural Products

Cultural products, particularly when they appear in tangible form, may be the subject of commercial or noncommercial exchange within the community. Since this exchange occurs among group members who already share the same culture and jointly "own" its cultural products, however, it does not involve the transfer of identity, although it may reinforce beliefs, aesthetic preferences, practices, or values that the parties hold in common. The cultural goods may be treated as property, but their social function is primarily communal rather than individual.

--Scafidi 2005:35

Scafidi, Susan. 2005. *Who Owns Culture. Appropriation and Authenticity in America Law*. Rutgers University Press.



Cultural (Mis)appropriation

IPinCH - Think Before You Appropriate (Activity)

- <https://bit.ly/tbya-colang2022> OR
- http://www.sfu.ca/ipinch/sites/default/files/resources/teaching_resources/think_before_you_appropriate_jan_2016.pdf

Instructions: Get into groups of 2-4 people & read pp. 4-7 of "Think Before You Appropriate," then discuss these questions with your group:

- What is the difference between cultural appropriation and misappropriation?
- Can you think of examples from your own community or experience?
- What about learning a language that is not part of your own cultural heritage? Is that (mis)appropriation?

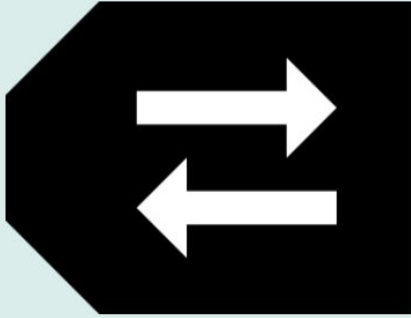


CARE Principles for the Governance of Indigenous Peoples Data



<https://www.gida-global.org/care>

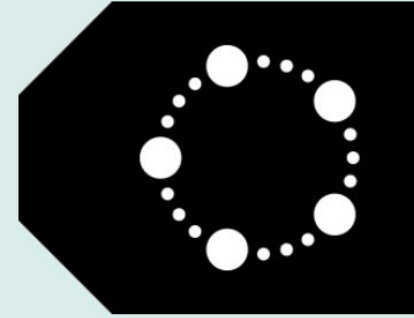
TK Labels & Notices



TK Attribution
(TK A)



TK Clan
(TK CL)



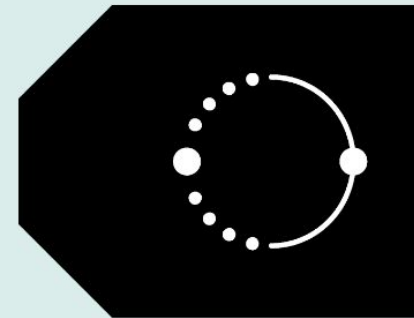
TK Family
(TK F)



TK Multiple
Communities
(TK MC)



TK Community Voice
(TK CV)



TK Creative
(TK CR)

TK Provenance Labels
from
<https://localcontexts.org/labels/traditional-knowledge-labels/>

TK Labels - Activity

Go to <https://localcontexts.org/labels/traditional-knowledge-labels/>

Look at the TK Labels for

- Provenance
- Protocols
- Permissions

Think back to the types of language work outputs that we brainstormed earlier.

Which of these labels would be appropriate for the your own language work outputs?



(Lack of) Consensus within Communities

Generational differences of opinion

- Pawnee Drum example

Change in community administration

- Chatino example

Other language examples (class...)



Day 2:

- Finish TK Labels
- UN Declaration on the Rights of Indigenous Peoples
- Copyright
- Public Domain
- Fair use/ Fair Dealings



TK Labels in Use (1 of 2)

- Partnership between
 - members of the Passamaquoddy community,
 - the US Library of Congress,
 - Local Contexts (the stewards of the labels), and
 - Mukurtu (a Content Management Software - configurable for protocols)
 - LOC site - Explanation
<https://www.loc.gov/collections/ancestral-voices/about-this-collection/rights-and-access/>
 - Collection in LOC: Jesse Walter Fewkes Collection of Passamaquoddy Cylinder Recordings
<https://www.loc.gov/search/?fa=partof:jesse+walter+fewkes+collection+of+passamaquoddy+cylinder+recordings>
 - The Passamaquoddy Peoples' Digital Archive (in Mukurtu software)
<https://passamaquoddypeople.com/>



TK Labels in Use (2 of 2)

Mukurtu repositories using TK Labels

1. Passamaquoddy People's Digital Archive <https://passamaquoddypeople.com/>
 - a. Passamaquoddy TK Labels:
<https://passamaquoddypeople.com/passamaquoddy-traditional-knowledge-labels>
 - b. Example record
 - i. Children's book <https://passamaquoddypeople.com/node/342>
2. Sq'ewlets people, Halq'eméylem language <http://digitalsqewlets.ca/index-eng.php>

Mukurtu repository **NOT** using TK Labels

1. Plateau People's Web Portal <https://plateauportal.libraries.wsu.edu/>
 - a. Séliš u Qlispé <https://plateauportal.libraries.wsu.edu/community/selis-u-qlispe>



Introduction: Copyright Scenario

Collaboration between native linguists and artist

Prayer for the community

- Original recording 2009
- Publication 2017
- Music 2020

<https://drive.google.com/file/d/1KzdO2mmfDlykFwbjeaRFOJJgxWDvZOuN/view?usp=sharing>



The Digital Wild

The Chatino prayer on TikTok

[https://www.tiktok.com/@chatinero/video/7066483556096281862?is from webapp=1&sender device=pc&web id=6895694519074555397](https://www.tiktok.com/@chatinero/video/7066483556096281862?is_from_webapp=1&sender_device=pc&web_id=6895694519074555397)



Intellectual Property:

Any creation of the human mind that has commercial value.

IP includes:

- Trademark
- Patent
- Trade secret
- Copyright



U.S. Copyright (1 of 8)

1787 - Foundation for U.S. copyright law is written into U.S. Constitution, Article 1, Section 8, Clause 8:

- “The Congress shall have Power [...] to promote the Progress of Science and useful Arts, by securing for limited time to Authors and Inventors the exclusive Right to their Writings and Discoveries.”

1886 - Berne Convention for the Protection of Literary and Artistic Work

- Every country has its own copyright laws, but the Berne Convention provides some guidelines that all signing countries follow

1989 - The US finally signed the Berne Convention



U.S. Copyright (2 of 8)

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories . . .

(U.S.C. Title 17, Sec. 102)



U.S. Copyright (3 of 8)

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes or choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings,
- Architectural works

(U.S.C. Title 17, Sec. 102)



Copyright (4 of 8)

Maxim

"You can't copyright an idea;
you can only copyright the expression of an idea"



U.S. Copyright (5 of 8)

NOT protected by copyright:

- Works that are not fixed in any medium (e.g., anything interpretive that can change, like interpretive dance)*
- Titles, names, slogans, numbers, familiar symbols
- Ideas, facts, some types of data (e.g., the white pages of a phone book, laws of physics)
- Lists of contents or ingredients
- Processes, procedures, methods
- Anything in the *public domain*

*In some countries, fixation is not required.



U.S. Copyright (6 of 8)

Duration - US

- Works created on or after Jan. 1, 1978 = life of author + 70 years
- Works-for-hire, anonymous, pseudonymous
 - 95 years from publication or
 - 120 years from creation
 - Whichever is shorter



U.S. Copyright (7 of 8)

“Copyright” is actually a bundle of rights, including permission to do the following:

- Reproduce the work
- Create derivative works (e.g., translations)
- Distribute copies
- Publicly perform the work
- Publicly display the work
- Transmit an audio recording (e.g., play on the radio)



U.S. Copyright (8 of 8)

Copyright is transferable - either as a bundle or as the individual rights

Authors might have to transfer all or some of the copyrights to a journal to publish an article. This can be negotiated to some extent!

When depositing a collection in an archive, you need to make some decisions about the copyrights associated with those materials (if you are the "co-creator").

Moral Rights

- Right for the author to be identified as such
- Right to protect the integrity of the work
- US copyright law only addresses moral rights in the visual arts



Public Domain

A legal space that is made up of **works that are not protected by copyright**

- Things in the previous list
- Works that were
 - Published before 1923
 - Published with copyright notice between 1923 and 1963, and a copyright was never renewed
 - Published without copyright notice between 1923 and 1977
- Works released or gifted into public domain
- Works produced by U.S. Government (b/c they were paid for by taxes, thus owned by the public)
- Folklore



Fair Use of Copyrighted Materials

Fair Use allows certain uses (in the U.S.) of copyrighted materials.

“[T]he fair use of a copyrighted work, including such use by reproduction, in copies or phonorecords or by any other means specified by that section, for purposes such as ***criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research***, is not an infringement of copyright.”

(US Code Title 17, Sec. 107)

Called “Fair dealings” in Canada -- similar to, but not exactly the same as, Fair Use in the US.



Fair Use Determining Factors:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work (published vs unpublished; creative vs non-fiction).
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for or value of the copyrighted work.

(US Code Title 17, Sec. 107)

Short video: [Copyright & Fair Use](#)



Copyright Activity

Working in small groups, discuss if/how copyright applies to or interacts with the products of language work (see next slide for the list we brainstormed on Day 1).



Miromaa Software:

acra.org.au/miromaa-software

→ used this software for CIMCC language apps

link: cimcc.org/education-center/cimcc-aboriginal-language-apps/

Verbal art poetry
Curriculum-immersion Schools

journal articles dictionaries

Grant proposals visual artwork

software scripts written oral stories

Story books

maps basket weaving

Children's books

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recordings of speech events

(Conversation, songs, music stories)

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(miniature funeral site materials protected information)

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apps games (physical or digital)

orthography transcriptions glosses

Brainstorm of the types of things created during language work. Created June 20, 2022 by workshop participants. Photo by Susan Kung. The Miromaa software notice in red in the upper left corner was NOT part of our brainstorming activity.



Activity: Fair Use

Class: Brainstorm some fair use examples

Small groups: pick one of these scenarios and use the Fair Use Evaluator:
<https://librarycopyright.net/resources/fairuse/index.php>



Day 3:

- Finish Copyright & Fair Use
- Ethics
- Informed Consent
- Memorandum of Understanding



Final thoughts on copyright

Licenses & Permissions

Examples:

1. Wedding Photos



Yes—absolutely! This email serves as permission.

Best,

Julia Balestracci

--

Julia Balestracci
Rights & Permissions; Assistant to the Director
Main Library Bldg., 5th Floor / 1510 E. University Blvd.
[P. O. Box 210055 / Tucson, AZ 85721-0055](mailto:Julia.Balestracci@uapress.arizona.edu)
Direct: [\(520\) 621-3911](tel:5206213911)

pronouns: she / her



From: Cruz, Hilaria <hilaria.cruz@louisville.edu>
Sent: Thursday, February 11, 2021 11:50 AM
To: Balestracci, Julia M - (juliabee) <JBalestracci@uapress.arizona.edu>
Subject: [EXT]Holy wind in Navajo philosophy

External Email

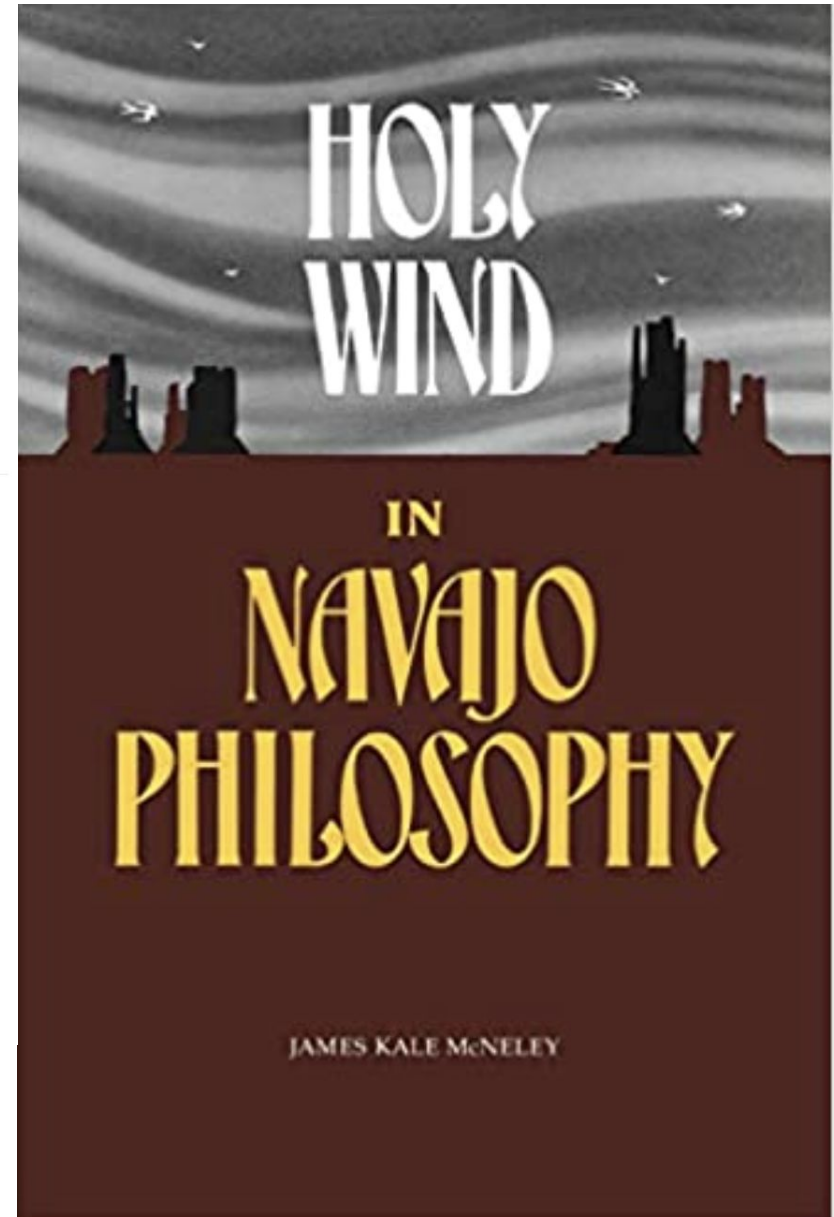
Dear Julia,

My name is Hilaria Cruz and I am an Assistant Professor in the Comparatives Humanities Department at the University of Louisville. I am teaching a course on Native American Religions and my students are working on a free translation to the text in the appendix of the book Holy Wind in Navajo Philosophy by the late James K. Mcneley and published by your [press](#).

I would like to know if students can post a translation to this text on their personal blogs or print their translation for their own use.

Thank you for your help,

Hilaria Cruz



Chahałtheel kót'éego alk'idahsiláago kwe'é hosiidlií', kwe'é
 Darkness like this each other on here we started here
 top lying existing,

hazlií' jini. Kwe'é díí bikáá' dahsiláháá nít'éé' hayookáá
 it hap- t.s. Here this on top up it had lain Dawn
 pened

silíí' jini níléi gónaa hoogáhígíí.
 it t.s. that across whitening.
 became

Ákohgo áadi díí alk'idahsiláháá nít'éé', nāch'i át'ééla
 So there these on one another it Wind it is
 lying was,

jini. Chahleelyéé nít'éé'. Éí báá níléi chahałtheel níléi
 t.s. Darkness it was. That is that Darkness that
 why

hakiildoh jó ǫ'éego da, nizhónigo kót'éego dich'i. Díí át'ééla
 settles like at when, beauti- in this it This it is
 over you night fully way breezes.

jini, diné át'ééla jini. Níléidéé' naaniikááh kót'éego nizhónigo
 t.s., per- it is. t.s. From when it in this beauti-
 son there dawns way fully

naaniidzigai yileehgo, dahsiláháá yikáitah, dich'i ǫeh jini.
 across it it that among the it usual- t.s.
 whitens becomes, streak Dawn breezes ly

Nizhónigo nāch'i hóloqóla jini. Áadi níléidi ní'ǫ'áahdi áadishíí
 Beautiful- Wind exists t.s. There back in the there
 ly there underworlds probably

ákohgoshíí díidí diné át'ééla jini (J T).
 so then it this per- it is t.s.
 seems son

2. Kót'éego bik'iidéel jini áadi áádóoshíí ında dinétah hoolyééj'
 In this onto it t.s. back from there Navajo to the
 way they passed there Land place
 called

dahadiidéel. Éí áádóo Saad ǫá'í wolyéego, t'áá ǫá'í saad
 they moved. From there Word One it is just one word
 called,

McNeley, James Kale. 1981. Holy Wind in Navajo
 Philosophy, p. 64. Tucson: University Press



UN Declaration on the Rights of Indigenous Peoples

Activity:

Look at the website for UN **Declaration on the Rights of Indigenous Peoples**

https://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf

- Read the 2 articles that specifically address language and cultural heritage, traditional knowledge and traditional cultural expressions
 - 13.1 (document pg. 7)
 - 31.1 (document pg. #11)
- What resonates with you? Discuss with your group.

"The United States was the last nation in the world to ratify UNDRIP and it declared its support for UNDRIP as aspirational and not legally binding."

from

<https://www.usetinc.org/general/undrip2021/#:~:text=The%20United%20Nations%20Declaration%20on,%2C%20Bangladesh%2C%20Bhutan%2C%20Burundi%2C>



Ethics

Rules, guidelines for establishing behavior (right vs. wrong) of individuals or groups
(<https://ethicsunwrapped.utexas.edu/glossary/ethics>)

Ethics statements

Linguistics Society of America:

[Ethics Statement](#) (July 2019) and [Ethics page](#)



American Anthropological Association:

[Principles of Professional Responsibility](#) (2012) and [Ethics Forum](#)



Society of American Archivists:

[Core Values Statement and Code of Ethics](#)



Informed Consent

Each US Institution has its own IRB protocol for obtaining informed consent.

University of Texas at Austin Linguistics Department IRB [consent form](#) template for documentary linguistics - specifically requests permission to

- Record audio and video (note-taking is assumed)
- Put all formats (audio, video, still photos, written notes) into an archive
- Use all data types for
 - Academic conference & classroom presentations
 - Creating language teaching/learning materials
 - Academic publications
- Associate participant's name with data in all above scenarios with an option for anonymity



MoU - Memorandum of Understanding

A document that formally describes

- The roles and relationships between 2 (or more) entities or organizations and
- Any ***agreements*** made between them.
- Delineates
 - Who will do what
 - Rights & protocols related to 'deliverables', 'products', 'outputs'
- Not legally binding (vs. contracts, which are binding)

MOU workbook: <https://rc.library.uta.edu/uta-ir/handle/10106/25651>

MOU template: <https://rc.library.uta.edu/uta-ir/handle/10106/25650>



Example of Language Documentation MoU

Thom, Brian. 2006. Respecting and Protecting Aboriginal Intangible Property: Copyright and Contracts in Research Relationships with Aboriginal Communities. Department of Canadian Heritage, Copyright Policy Branch, Ottawa. PCH contract no. 45172644.

Includes 6 steps used to write MoU between the Hul'qumi'num Treaty Group and the Linguistics Dept. of the University of Victoria

The signed MoU.*

Activity: Follow the link to the signed MOU, read it, and discuss with your group.

*The MoU references CURA on pg 1. The Community-University Research Alliances (CURA) grants was a program of the Social Sciences and Humanities Research Council of Canada that has since been discontinued.



Activity: Ethics

A non-Indigenous community member who is familiar with the Indigenous "folk" stories of the community rewrites these stories as children's books, illustrates them, and publishes them.

- What is the harm in this scenario?
- What can be done to repair the harm?



Day 4:

- Finish MOUs
- Open Access Movement
- Creative Commons Licenses



The Open Movement

Open Access:

Material that is “digital, online, free of charge, and free of most copyright and licensing restrictions . . . OA focuses on *literature* that authors give to the world without expectation of payment” (Suber 2012).

The OA movement has expanded literature to include any creation in a digital format.

Open Source:

“The term “open source” refers to something that can be modified and shared because its design is publicly accessible” ([OpenSource.com](https://opensource.com), n.d.).

Open Source Software:

“Software whose source code is available for modification or enhancement by anyone” ([OpenSource.com](https://opensource.com), n.d.).






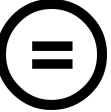
Creative Commons Licenses

- A set of licensing tools
- Work in conjunction with copyright
- All of the CC licenses allow other people
 - to make unaltered copies of the creation and
 - to share the creation non-commercially
 - provided that they
 - attribute the creation to its creator,
 - provide info about where they found the creation and
 - the CC license it bears.



Creative Commons License Elements

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-  **ShareAlike (SA)** - All adaptations of a work bearing this icon must be shared using the same license.
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- No commercial use is allowed.
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- Any adaptations of the original work may not be shared in any way.



Public Domain Dedication Tool CC0

This tool allows you to give up all of your copyrights and dedicate the creation to the public domain.

Permissions granted:

- User can use the creation any way they want, and they do not have to attribute the author

Terms of use:

- Attribution of the original work is NOT required, though it is recommended as a best practice.



Children's Books in Chatino and Other Indigenous Languages

Links to children's books

- <https://ir.library.louisville.edu/chatino/>
- <https://digitalcommons.dartmouth.edu/motherlanguage/>



[Karla TyiE-XkwaJ](#) (2021) by Hilaria Cruz (author), Grace Ann Rogers (author) and Sasha Zelenkevich (illustrator), licenced under [CC BY-NC-SA 4.0](#). Fair Use.

Dartmouth books

First edition- cloth

- one student did her own drawings
- others pulled images from the internet

Lesson: cloth books are too costly and time consuming for wider distribution



Photo by Hilaria Cruz

Agindaasodaa!



Skyler Kuczaboski

illustrated by Michaela Artavia-High

Published by:
The William H. Neukom Institute for Computational Science
Dartmouth College
Haldeman Center 2nd Floor, Room 252
27 North Main Street
Hanover, NH 03755
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Louisville Books

Plays with tonal rhymes

Published by:
The Endangered Languages Course
(LING 590), Fall 2019
The Comparative Humanities Department
University of Louisville
Bingham Humanities 303
2211 South Brook Street
Louisville, KY 40292
(502) 852-6805

First published 2021



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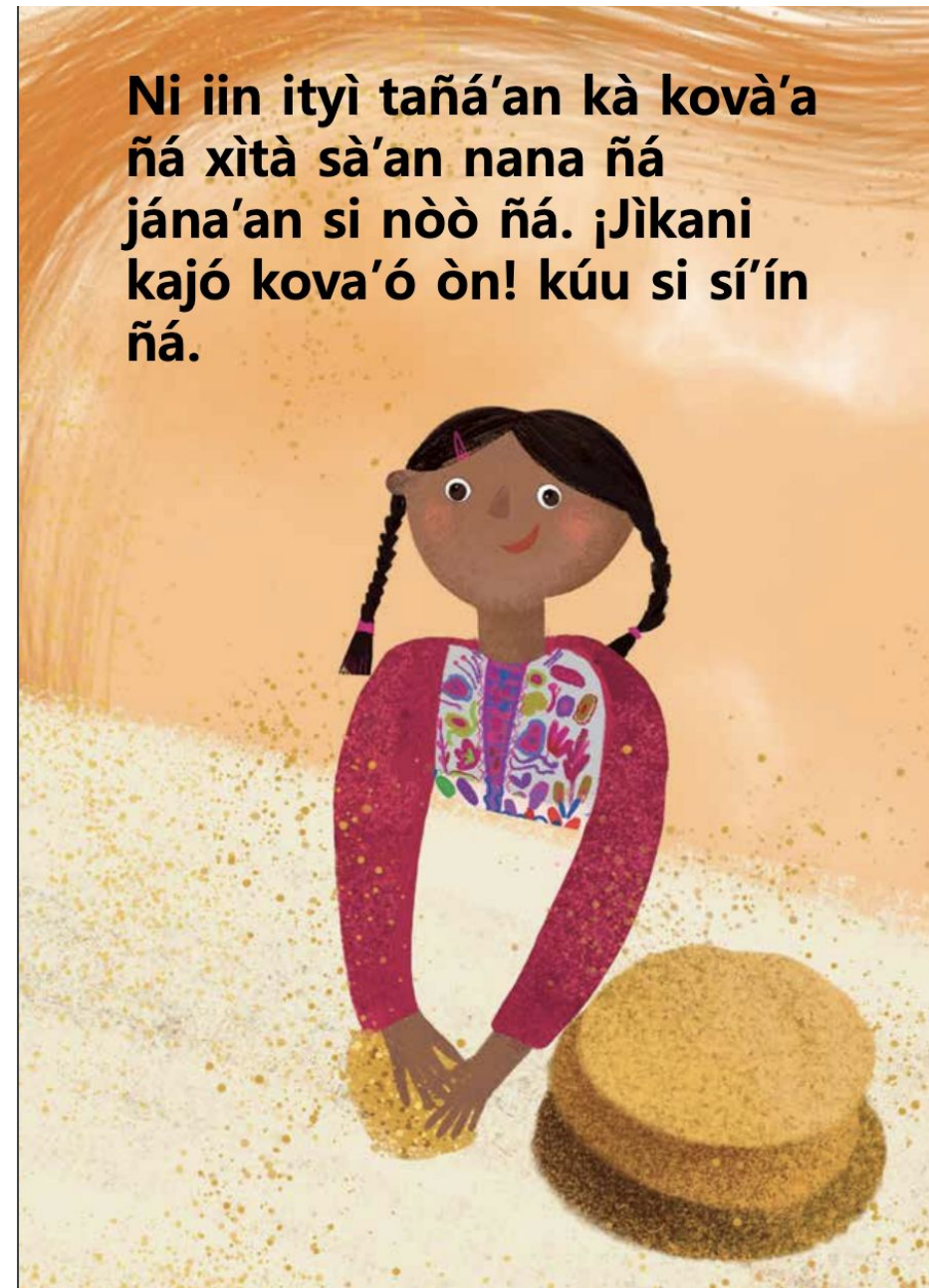
Translating the books into other (indigenous) languages

Currently, they are being translated into a San Sebastian Mixtec (Otomanguean) from Oaxaca, Mexico.

I invite you to translated them into your languages too!

Come talk to me :)

[Karla ñá tyijó ñà'an](#) (2021) by Hilaria Cruz (author), Grace Ann Rogers (author), Sasha Zelenkevich (illustrator), Félix Cortés (translator), Iara Mantenido (compiler), licenced under [CC BY-NC-SA 4.0](#). Fair Use.



Blurb and other issues relating to copyrights when translating the books

“I'm so happy to see that the Chatino books project is spreading to other indigenous languages! The Mixtec translation of these books is wonderful, and I know that readers will take great joy in them. Reading and writing can be a key tool for language resilience, and I hope that having more Mixtec books in the world will inspire others to read and write more books in Mixtec.” (Emily Gref)

Sqwe^F qa^H nga^J tyin^H chaq^F ngyaq^C la^E xa^I ta^A ktyi^C
chaq^F tnya^J. Ntyqya^J sqen^G nya^J chaq^F nya^K renq^K
ktyi^E re^C. Tsa^A la^E ndyon^J ska^I chaq^F ja^E no^E sqwi^J
ktyi^C chaq^F tykwiq^J renq^J. Kanq^G chaq^F sqwe^F qa^J
nga^J tyin^H chaq^F sqwi^J la^E ktyi^C no^I ngyaq^C chaq^F
tnya^J xa^A-lyu^I.

El proyecto de libros chatinos es muy inspirador y me alegra mucho ver que se publican nuevos libros en chatino. La lectura puede ser una herramienta clave para el fortalecimiento del lenguaje, y estoy muy feliz de que haya más chatino escrito en el mundo.

The Chatino books project is so inspiring, and it brings me great joy to see new books in Chatino being published. Reading can be a key tool for language resilience, and I am so happy that there is more written Chatino out in the world.

—Emily Gref, Planet Word Museum.



Group Activity: Creative Commons

Think about (& share with your group) something that you created during your language work.

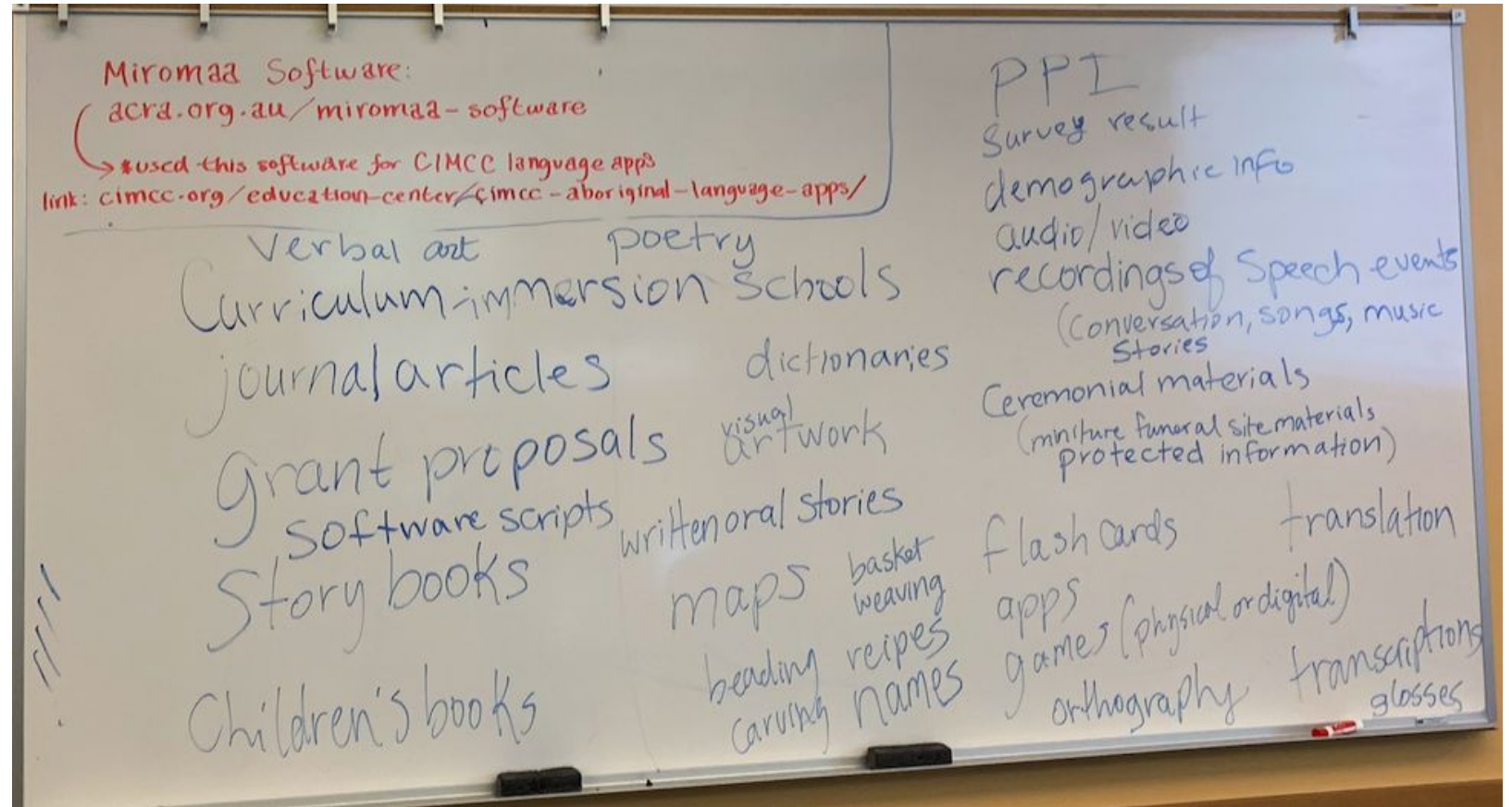
Do you think that it is protected by copyright?

If so, would you put a Creative Commons license on it?

If not, why?

If so,

- why?
- which license would you use?



Brainstorm of the types of things created during language work. Created June 20, 2022 by workshop participants. Photo by Susan Kung. The Miromaa software notice in red in the upper left corner was NOT part of our brainstorming activity.

Final Q & A



References & Resources

For references, please see the [Bibliography](#).

See the [Helpful Links](#) document for additional resources.



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