



Welcome

Session C3- Continued Tourism Basics:
Laying the Legal Foundation Part 2-
Intellectual/Cultural Property Protections
Thursday, September 20, 2018
10:45am – 12:15pm

To receive a Certificate of Completion, please provide information requested in the session sign-in sheet for each session attended



AIANTA
American Indian Alaska Native
Tourism Association



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Tribal Cultural and Intellectual Property Protections

Thursday, Sept. 20, 2018, 10:45 am – 12:15 p.m.

Breakout Session C-3, Tourism Basics

Prepared for the
20th Annual American Indian Tourism Conference
September 17-20, 2018
Pueblo of Isleta

Prepared by

Melody L. McCoy, Staff Attorney

Native American Rights Fund

Boulder, Colorado

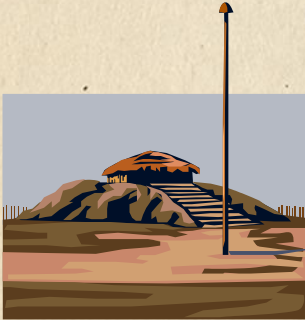
www.NARF.org



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- Cultural Property = tangibles



NAGPRA

- Intellectual Property = intangibles





Cultural Property Protected by Federal Law



- Sites
- Remains
- Animals & Plants



Federal Cultural Sites Laws

- HSA
- NHPA
- ARPA
- NAGPRA





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Pueblo of Sandia v. United States (1995)
National Historic Preservation Act





Federal Cultural Remains Laws

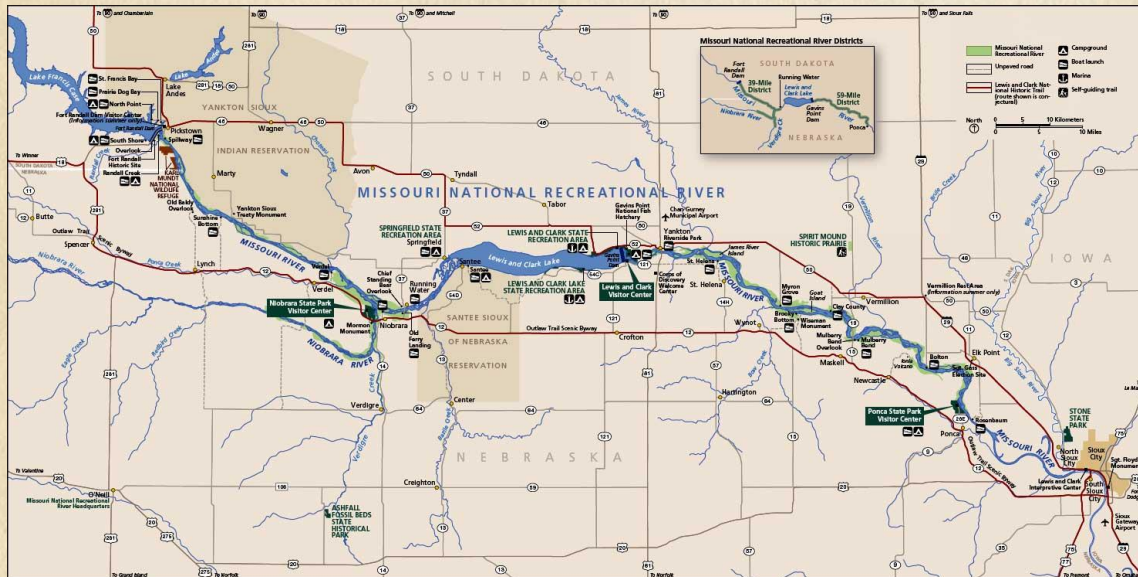


- ARPA
- NMAIA
- NAGPRA



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Yankton Sioux Tribe v. U.S. Army Corps of Engineers (2007) Native American Graves Protection and Repatriation Act





Federal Animals and Plants Protection Laws



- ESA
- Lacey Act
 - Tribal Law





Quechan Tribe v. U.S. Dep't of the Interior (2010)
Endangered Species Act





Minnesota Chippewa Indians (2015)

Lacey Act





GAO Report (Aug. 2018)

- Big overseas market for sale of tribal cultural property
 - Tribes in Southwest most affected
 - Limited or no specific federal law protections
 - New proposed legislation introduced (S. 1400)
 - New or revised laws needed
 - Better inter-agency collaboration needed

International Law

- United Nations Declaration on the Rights of Indigenous Peoples (2007)
 - Article 11
States' redress may include restitution for cultural property taken
 - Article 12
Right to use & control ceremonial objects & right to repatriation of human remains
 - Article 12
States shall seek to enable access & repatriation of ceremonial objects & human remains in their possession in conjunction with indigenous peoples



Tribal Cultural Property Codes



- Regulate Cultural Resources
- Stop damage & misappropriation
- Plan for economic development



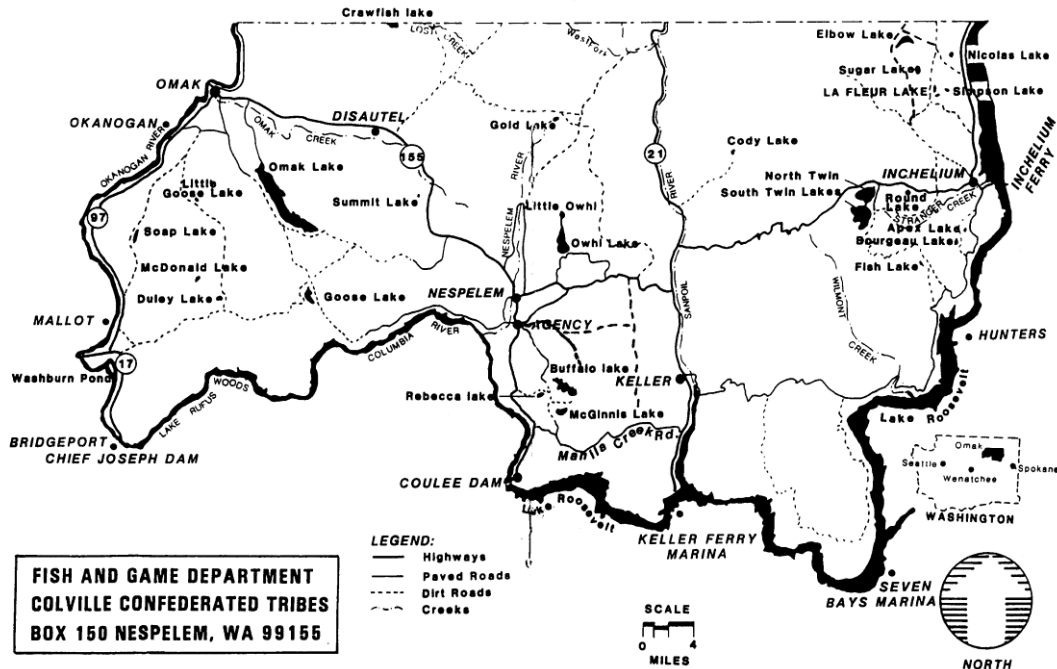
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Hoover v. Colville Confederated Tribes (2002)

Deer, elk, plants

COLVILLE INDIAN RESERVATION





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Tribal Codes Collection



<http://www.narf.org/nill/triballaw/index.html>



Federal Intellectual Property Laws

- Copyright ©
- Patent
- TrademarkTM





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Copyright



Authorship?

Limited duration?





Copyright Case

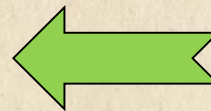
Tuolumne Band of Me-Wuk Indians v. Baca,
No. Civ.-F-03-6363, (E.D. Cal. Feb. 17, 2005)

Dance video

Music CD



Injunction





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Patents

- Product or Process



Novel?





Patent Applications



- Blackjack play method (2015)
- National telephone lottery system (2011)



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Trademark Law

- Symbols



Commercial?





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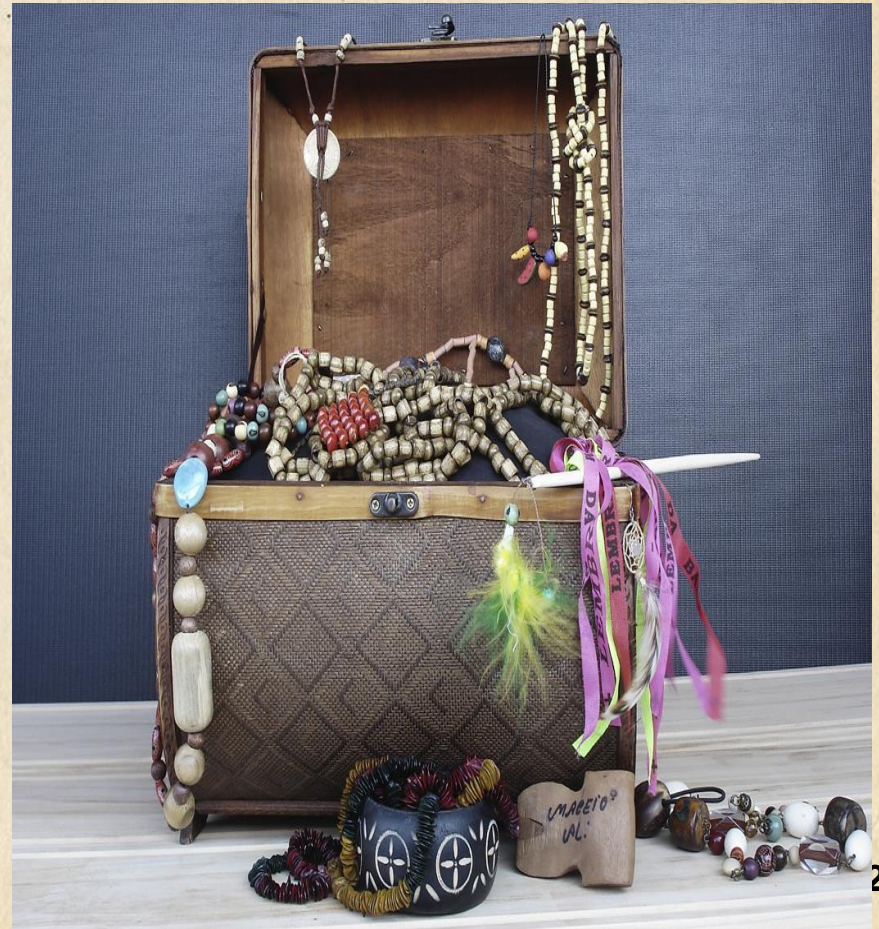
Trademark Case

Lumbee Tribe v. Anheuser-Bush (2016)



Indian Arts and Crafts Act

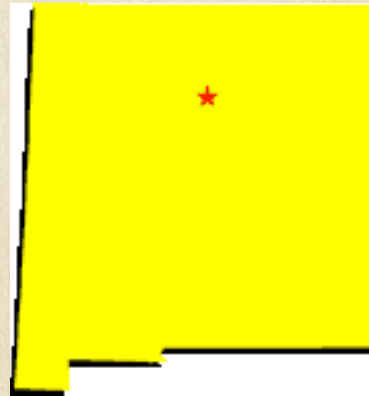
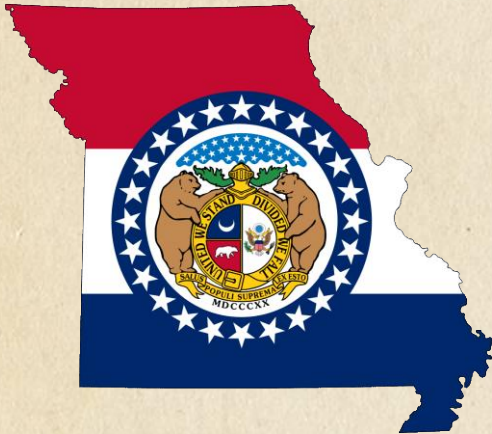
- 1935 + Amendments
- Trademark & Truth
in marketing provisions
- Criminal penalties





Indian Arts and Crafts Act

Criminal cases





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Indian Arts and Crafts Act Settlements



<http://nativenewsonline.net/currents/indian-arts-crafts-act-settlement-pendleton-woolen-mills-reached/>



Indian Arts and Crafts Act

Litigation

- *Native American Arts, Inc.*
 - Over 150 court cases in 15 years
- *Navajo Nation v. Urban Outfitters*
 - Filed February 2012, federal district court, New Mexico
 - Claims under Lanham Act & IACA



Indian Arts and Crafts Act

Navajo Nation v. Urban Outfitters

- UO using name / mark “Navajo” since 2001
- To sell clothing, jewelry, footwear, house wares
- Navajo Hipster underwear & flasks online sales in 2011



Indian Arts and Crafts Act

Navajo Nation v. Urban Outfitters

- Tribe argues consumer confusion and deception under IACA
- Dec. 2015, Court allows these claims to go forward
- May 2016, Court approves Tribe's damages calculation
(\$1,000 /product / day vs. \$1,000 / day)



Indian Arts and Crafts Act *Navajo Nation v. Urban Outfitters*

- September 2016, Settlement!!





Tribal Copyright & Patent Codes

- Pre-emption



states
tribes

- Infrastructure & resources
- Enforcement





Tribal Trademark / Arts & Crafts Codes

- States

Model State Trademark Bill

14 States Indian Arts & Crafts Sales Laws

- Tribes

Cherokee, Navajo, Yurok

- Practical & economic costs





International Law

- United Nations Declaration on the Rights of Indigenous Peoples (2007)
 - Article 11
States' redress may include restitution for intellectual property taken
 - Article 31
Right to maintain, control, protect & develop intellectual property



International Law

- Paris Agreement and Paris Decision (2016)
 - Agreement Article 7
Adaptation action may be based on TK of
Indigenous Peoples
 - Decision Article V
Recognizes need to strengthen TK,
& establishes a platform for exchange of
experiences & best practices



International Law

- World Intellectual Property Organization –
ongoing negotiations for International Instrument to
Protect IP & TK, GRATK, & TCE
 - USG consultation with AI/AN Tribes
 - Sovereignty, Scope & Duration, Public Domain, FPIC



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Publicity

Cultural appropriation: Make it illegal worldwide, Indigenous advocates say

Delegates in Geneva from 189 countries are looking at the issue, and some want UN to speed it up

By Hilary Bird, CBC News | Posted: Jun 13, 2017 8:13 AM CT | Last Updated: Jun 13, 2017 11:09 AM CT



James Anaya, dean of law at the University of Colorado is urging member states of WIPO to make Indigenous cultural appropriation illegal under international law. (Sean Kilpatrick/Canadian Press)

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Backlash

In Defense of Cultural Appropriation



Kenan Malik JUNE 26, 2007



Today's Left Would Have Called Elvis's Music 'Cultural Appropriation'



Elvis Presley in 1957 (Library of Congress)

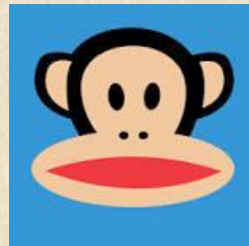


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Non-Law Protection Efforts

- Social Media
 - DSquared2
 - Paul Frank



SORRY!





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Non-Law Protection Efforts

BASEBALL

Cleveland Indians Will Abandon Chief Wahoo Logo

By DAVID WALDSTEIN JAN. 29, 2018



The Cleveland Indians will phase out the Chief Wahoo logo. But other teams continue to face controversy for the use of Native American imagery that is considered racist by many. By SARAH STEIN KERR on January 29, 2018. Photo by Patrick Semanulewicz/Associated Press. Watch in Times Video »

The Cleveland Indians will stop using the Chief Wahoo logo on their uniforms beginning in 2019, according to Major League Baseball, which said the popular symbol was no longer appropriate for use on the field.

<https://www.nytimes.com/2018/01/29/sports/baseball/cleveland-indians-chief-wahoo-logo.html> 37



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Non-Law Protection Efforts

Indians Remove Chief Wahoo from Uniform in Toronto

Written By: Chris Creamer • Friday, September 7, 2018



An unscheduled Turn Ahead the Clock game was played last night in Toronto as the Cleveland Indians took to the field wearing, what we can probably assume, is **their new road uniform for the 2019 season**.

<http://news.sportslogos.net/2018/09/07/indians-remove-chief-wahoo-from-uniform-in-toronto/> 37