

# Language Documentation: Issues of Consent, Copyright, Intellectual Property and Traditional Knowledge

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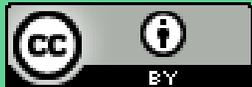
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## Overview

1. Ethics, IRB, Informed Consent, MoUs
  2. Intellectual Property (IP)
  3. Traditional Knowledge (TK)
  4. Competing Interests of IP vs. TK
  5. Implications for Archives Users & Depositors
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# Ethics Statements

American Anthropological Association:

Principles of Professional Responsibility <http://ethics.americananthro.org/category/statement/>

Linguistics Society of America:

Ethics Statement [http://www.linguisticsociety.org/sites/default/files/Ethics\\_Statement.pdf](http://www.linguisticsociety.org/sites/default/files/Ethics_Statement.pdf)

Ethics page: <http://www.linguisticsociety.org/resource/ethics>

Society of American Archivists:

Core Values Statement and Code of Ethics

<http://www2.archivists.org/statements/saa-core-values-statement-and-code-of-ethics#.V0oyKZMrI0Q>

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## LSA Ethics Statement

"Some communities regard language, oral literature, and other forms of cultural knowledge as **valuable intellectual property** whose ownership should be respected by outsiders; in such cases **linguists should comply with community wishes regarding access, archiving, and distribution of results**. Other communities are eager to share their knowledge in the context of a **long-term relationship of reciprocity and exchange**. In all cases where the community has an investment in language research, **the aims of an investigation should be clearly discussed with the community and community involvement sought from the earliest stages of project planning.**"

(excerpt from the end of section 3, emphasis mine)

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Image from the Voices Against Violence 2016 Consent is Golden Campaign at UT-Austin

# IRB - 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 (see next slide) - specifically requests permission to

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

# Consent Form

## Consent for Participation in Research - Excerpt

### Uses of your data

There are other ways that we may want to use your data in the future. Please let us know which of the following ways you permit us to use the words, sentences, and recordings from our work with you. You can freely decide whether or not you would like this information used in these ways. If you decide that you would not like this information to be used in these ways, this will not affect whether or not you are allowed to participate in the research study.

1. Today it is common practice to put language documentation data in a digital language archive.

We may wish to archive your data at [give name and web address of one or more digital archives]. When data is put in a digital archive, it is preserved permanently and is made accessible to registered archive visitors, except if you place conditions on access. Is this permissible with regard to: Audio recordings \_\_\_; Video recordings \_\_\_; still photographs \_\_\_; written notes by you or by us \_\_\_? (State yes; yes with conditions; or no; if there are conditions, please state).

2. We may wish to present your data at an academic conference or in a classroom. Is this permissible with regard to: Audio recordings \_\_\_; Video recordings \_\_\_; still photographs \_\_\_; written notes by you or by us \_\_\_? (Yes or no?)

3. We may wish to use your data in creating language learning materials. Is this permissible with regard to: Audio recordings \_\_\_; Video recordings \_\_\_; still photographs \_\_\_; written notes by you or by us \_\_\_? (Yes or no?)

4. We may wish to use your data in academic publications. Is this permissible with regard to: Audio recordings \_\_\_; Video recordings \_\_\_; still photographs \_\_\_; written notes by you or by us \_\_\_? (Yes or no?)

If you answered yes to 1, 2, 3, or 4: When linguists present the results of their work to the public, it is customary for them to name and say thank you to language speakers for their contributions. May we use your name in public for that purpose? (Yes or no?)

If your answer was 'no' just above, we will not associate your name with the your data, and all uses of your data will exclude any information that will make it possible to identify you as a subject.

# Creative Collaboration

- Free prior and informed consent
- Shared control over process and product
- Acknowledgement and attribution
- Respect for cultural differences
- Reciprocity and benefit-sharing

IPinCH (2015, pp. 6-7)



See also Czaykowska-Higgins 2009 for descriptions of (and arguments for) models of linguistic research that involve community collaboration and engagement.

Image: Instituto Koskun Kalu. 2006. General Congress of the Kuna Culture (CUK017R001I001.pdf). In the Kuna Collection of Joel Sherzer. The Archive of the Indigenous Languages of Latin America, [ailla.utexas.org](http://ailla.utexas.org). PID ailla:142466.

# 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 and how the products/benefits of collaboration will be shared.
- Not always legally binding.

MOU workbook: <https://uta-ir.tdl.org/uta-ir/handle/10106/25651>

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## 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 Hul'qumi'num Treaty Group and the Linguistics Department of the University of Victoria

See the Hul'qumi'num Treaty Group [projects' website](#), including the signed [MoU](#).

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## Part 2: Intellectual Property

- Intellectual Property
  - U.S. Copyright
  - Fair Use
  - Creative Commons License
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# Intellectual Property

Any original and tangible creation of the human mind that has commercial value.

IP includes:

- Copyright
- Trademark
- Patent
- Other things such as Trade Secrets, Industrial Designs

Balance between author or creator's ability to profit from an idea and the benefit that idea has to the public (or the greater good of the idea)

# Intellectual Property

- All countries have their own IP laws.
  - You might need to be informed about the IP laws in multiple countries.
  - If you are a French national and resident, doing language documentation work in Mexico, and you want to put the language documentation data into AILLA (in the US), then you must be familiar with IP laws for those 3 countries.
  - This presentation focuses mainly on US IP law.
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## U.S. Copyright

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

1. Reproduce the work
2. Create derivative works (e.g., translations)
3. Distribute copies
4. Publically perform the work
5. Publically display the work
6. Public performance of an audio recording via digital or analog transmission

Copyright is transferrable - either as a bundle or as the individual rights. Authors might have to transfer all or some of these copyrights to a publisher when publishing articles or books. These rights can be negotiated! You do NOT have to give up all your rights!

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# Moral Rights (a.k.a. Author's Rights)

Moral Rights protect the reputation of the creator.

Unlike copyrights, moral rights are not economic

- Attribution – right to claim authorship
  - Integrity – protects the integrity of the author's work
  - Inalienable from creator
-

# U.S. Copyright

Requirements for a work to be protected by copyright:

1. The work has at least a minimal degree of originality or creativity; and
2. It is fixed in a tangible medium.

Copyright is automatic as long as these 2 requirements are met.

No need to register the work.

No renewal allowed.

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# Copyright

Maxim

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

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# U.S. Copyright

Applies to

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

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

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# U.S. Copyright

## **NOT** protected by copyright:

- Works that are not fixed in any tangible 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., phone book white pages, laws of physics, weather records, dictionary entries)
  - Lists of contents or ingredients (see databases and words below)
  - Processes, procedures, methods (e.g. recipes for food or medicine, material culture instructions)
  - Folklore (myths, traditional beliefs, superstitions, stories, customs, oral history)
  - Databases (including data collected together in a CSV file)
  - Words in a language (elicitation of grammar, words)
  - Anything in the *public domain*
-

# U.S. Copyright

## **Public domain**

Works that are not protected by copyright

- Things in the previous list
  - 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)
  - 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
-

# U.S. Copyright

## Duration

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

# Copyright and Recorded Sound

- Federal law covers sound recordings created after 1972 (life of creator + 70)
    - Everything else is covered by state statutory and common law copyright (not federal).
  - Recordings published 1972-1989 without note or registration are in public domain.
-

# Cornell University Copyright Information Center

US copyright term & the public domain

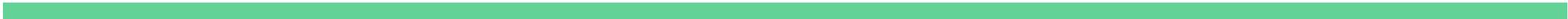
<http://copyright.cornell.edu/resources/publicdomain.cfm>



# Fair Use of Copyrighted Materials

“[T]he fair use of a copyrighted work, ... for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not an infringement of copyright.” (US Code Title 17, Sec. 107)

Short video: <https://www.youtube.com/watch?v=nHmnjSR7bVM&feature=youtu.be>



# Fair Use

Determining Factors include:

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 [photograph vs 1,000 pg book].
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole [reproduction of the entire photo vs. quoting a single paragraph from the book].
4. The effect of the use upon the potential market for or value of the copyrighted work.

(US Code Title 17, Sec. 107)

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## Copyright - Considerations for Language Documentation

- All co-authors of a work equally share the copyright, no matter how much or little work they did.
    - All co-authors should get credit for the work.
  - Facts about the language (lexemes, structure, phonetics, phonology, syntax, sociolinguistic features) are not protected by copyright - not "creative"
    - Language consultants providing this sort of data are NOT co-authors
  - Language consultants who provide any sort of creative expression of the mind and who do translation work (derivative products) might be co-authors depending on the CR law of the country.
  - See Newman 2007, 2012 for more information.
  - Avoid doubt – talk about copyright and/or creative commons licenses with community language collaborators and consultants!
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# Copyright Infringement & Penalties

## Infringement:

- Copyright holders can claim an infringement, even if there is a Fair Use defense.
- Copyright infringement = law suit

## Penalties can include:

- Damages – actual or statutory (\$750-\$30,000 just damage and up to \$150K for willful infringement)
  - Injunction: cease infringement
-

# Digital Millennium Copyright Act (DMCA) of 1998

- Balance between protecting CR and encouraging e-commerce.
  - Prohibits circumvention of copyright protects systems such as digital rights management (DRM) – no exception for fair use.
  - Offers a safe harbor for internet service providers.
  - Don't share copyrighted digital files if you don't own the copyright!
-

# Copyright & Digital Archiving and Preservation



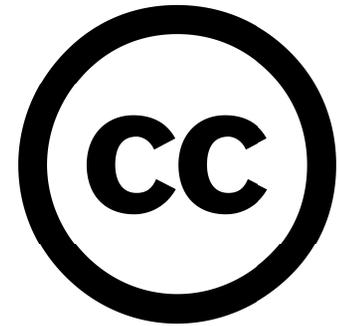
<https://www.youtube.com/watch?v=95IYTx4boTQ&feature=youtu.be>

## Releases (copyright release, media release, image release)

- Signed agreement used to secure any claim to copyright from subjects of photos or “oral history” recording sessions.
  - Signed (executed) at the time that the photos or recordings are made.
  - Release collector should make sure that rights that are secured include all the possible future uses (e.g., right to use photo or recordings in “any medium that exists now and into the future” and right to put it in an archive).
  - Not the same as Informed Consent!
-

# Creative Commons License

- Allow author/creator of a work to reserve or waive some or all copyrights to make the work more useful to and sharable with the public.
- CCLs work in conjunction with copyright.
- CCLs cannot be revoked.
- 7 types:
  - Creative Commons Public Domain Dedication (CC0)
  - Attribution (CC BY)
  - Attribution-NoDerivs (CC BY-ND)
  - Attribution-ShareAlike (CC BY-SA)
  - Attribution-NonCommercial (CC BY-NC)
  - Attribution-NonCommercial-ShareAlike (CC BY-NC-SA)
  - Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)



## Part 3: Traditional Knowledge

- Traditional Knowledge (TK)
- Other Terms
- IP and TK
- Customary Laws / Protocols



## Traditional Knowledge

**"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 <http://www.wipo.int/tk/en/>).

Much TK is not (automatically) protected by IP law.

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# Traditional Knowledge

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):**  
expression of traditional culture, e.g. dance, music, art, designs, symbols, etc.

# Traditional Knowledge

Other terms include

- Indigenous Knowledge
  - Traditional Ecological Knowledge
  - Cultural Heritage
  - Indigenous Cultural
  - Aboriginal Intangible Property
-

## IP and TK

"As the recording of Indigenous knowledge and information has predominantly been conducted by non-Indigenous people, the making of the material into tangible form, photographs, sound recordings, films etc. means that ownership tends to lie with the non-Indigenous researcher or creator of the work. The advent of digital technology complicates processes of ownership. [...] For example, just because some material is in the public domain and even out of copyright protection doesn't necessarily mean that it is appropriate to circulate freely on the web with little or no restriction or moderation."

Jane Anderson (2005, p. 85)

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## Customary Laws / Protocols

Laws or rules that "dictate specific rights, responsibilities, and cultural obligations" in indigenous communities

(IPinCH 2015, p. 5).

These vary (greatly) between communities.

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## Part 4: Competing interests of IP & TK

- Intellectual Property vs Indigenous Traditional Knowledge
  - Attempts to remedy competing interests
    - Ethics Statements (see Part 1)
    - Ethics (IRB) Protocols (see Part 1)
      - Prior and Informed Consent (see Part 1)
    - MoUs (see Part 1)
    - Other Permissions
-

# Competing interests: IP vs. TK

## IP Law:

- Protects an individual work
- For a finite amount of time
- Goal is to release the work into the public domain
- Laws are specific to each country
- Only protects the tangible (material) expressions

## TK:

- Applies to an entire body of knowledge
- Indefinitely - past, present and future
- Preference is to keep knowledge out of the public domain.
- Customary laws / protocol specific to each community
- Intangible TK is not protected by IP

## Competing interests: IP vs. TK

Many organizations are working to ensure some level of IP protection for TK:

- World Intellectual Property Organization's Inter-Government Committee (IGC) on IP and Genetic Resources, Traditional Knowledge and Folklore
  - UN issued the Declaration on the Rights of Indigenous People, which includes the need for IP protection for Indigenous TK.
  - Indigenous Communal Moral Rights amendment (2003) to the Australian *Copyright Act 1968*.
  - IPinCH: Intellectual Property in Cultural Heritage: Theory, Practice, Policy, Ethics
  - Among others
-

## Other Permissions

- Country
- Tribal or Indigenous government
- Community government or council
- ...

 Conselho Nacional de Desenvolvimento Científico e Tecnológico	Ministério da Ciência, Tecnologia e Inovação	 GOVERNO FEDERAL PAÍS RICO E PAÍS SEM POBREZA
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Ofício COAPG nº 241/2014 Brasília (DF), 31 de dezembro de 2014.

Ilmo. Sr. Dr.  
[REDACTED]

Coordenação de Áreas Linguísticas  
Av. Magalhães Barata, nº 376 – Bairro de São Braz  
Caixa Postal, 399  
66040-170 – BELÉM – PA

Ref.: Informa a publicação da Portaria MCT nº 1401/2014.

Expedição Científica	Processo 010046/2009-7 Projeto: "Análise e descrição da Língua
Coordenador(a) estrangeiro(a)	[REDACTED]
Período de execução	Um ano, contado a partir de 16 de outubro de 2014.

Prezado Senhor,

Encaminhamos, em anexo, cópia da Portaria MCT nº 1401/14, publicada na Seção 1, pg. 14, do Diário Oficial da União de 24/14/2014, que autorizou a prorrogação da pesquisa em epígrafe.

Informamos que de acordo com o Parágrafo único, do Art. 1, da Resolução Normativa nº 92/2010, para obtenção da prorrogação do visto específico em seu passaporte o pesquisador estrangeiro deverá apresentar, à autoridade consular, cópia da Portaria do Ministro de Estado da Ciência e Tecnologia, que autorizou a atividade e sua participação, publicada no Diário Oficial da União.

Aproveitamos a oportunidade para lembrar que se faz necessário o envio de relatórios periódicos, conforme disposições contidas no Capítulo VIII, da Portaria MCT nº 55/90. Segue, abaixo, a relação do(s) relatório(s) a ser(em) remetidos ao CNPq:

Relatório final - no prazo de até 30 (trinta) dias após o término da atividade de coleta, a

## Part 5: Implications for Archives Users & Depositors

- Archives users
    - User agreements
    - Citing archived materials
  - Archives depositors
    - Considering what materials that will go in an archive
    - Creative collaboration with communities
    - Memorandum of Understanding (MoU)
    - Cite yourself!
-

# Users - User Agreements

All archives have some sort of User Agreement

- Terms and Conditions of Use
- Rules and Conditions of Access
- Conditions of Use of Archive Resources

## AILLA Conditions

### Conditions for Use of Archive Resources

Resources deposited in the AILLA database are protected by the AILLA License Agreement or by more specific agreements signed by the depositors and AILLA's directors. While AILLA can not guarantee that no violations of these agreements will occur, if we learn of a violation, AILLA will notify the AILLA community of the violation.

"I agree to the following conditions on the use of AILLA resources:

[https://ailla.utexas.org/site/rights/use\\_conditions](https://ailla.utexas.org/site/rights/use_conditions)

---



**Citation  
needed**

## Users - CITE ARCHIVED MATERIALS!!!!

This is the only way that the creators of these materials will get proper acknowledgement and attribution!!!!

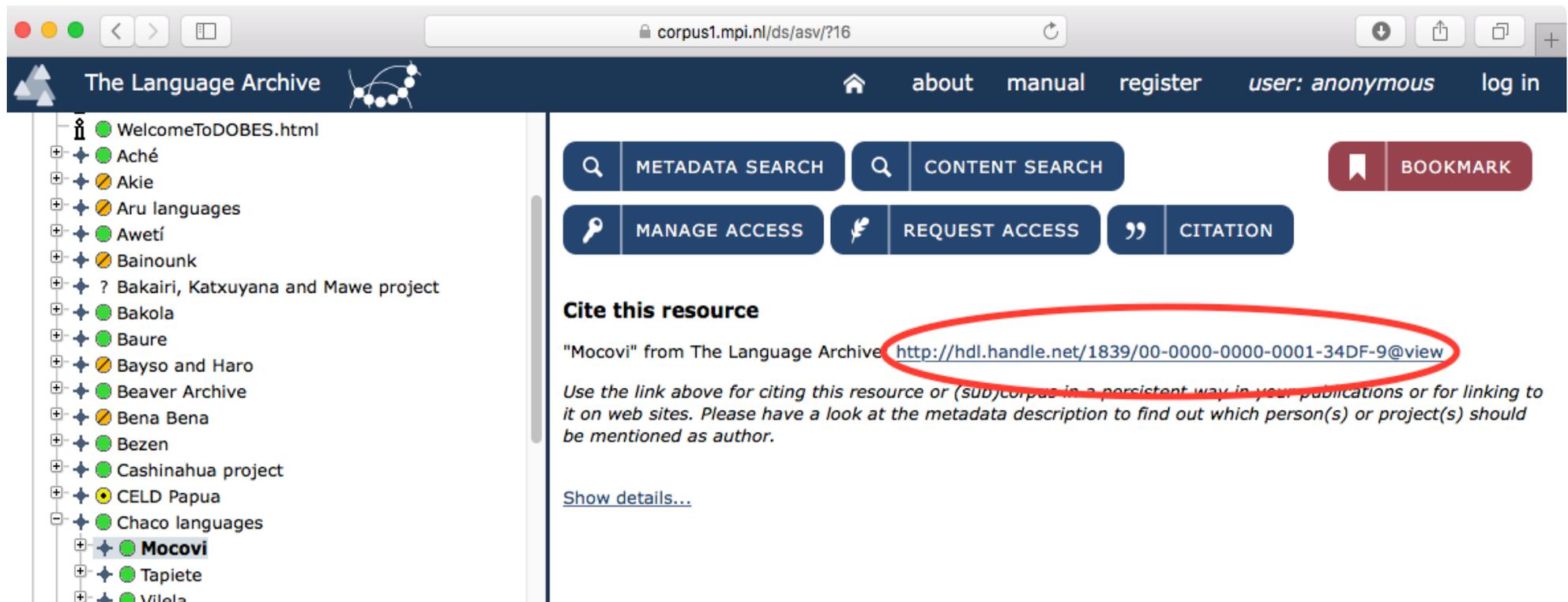
See the AILLA Citation Guidelines (and Kung & Pérez González 2017) for examples: <https://ailla.utexas.org/site/rights/citation>

All archives, including digital archives, have citation guidelines that should be followed.

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# Users - Citing archived materials

The Language Archive has a citation button that leads to the citation:



The screenshot shows a web browser window displaying the 'The Language Archive' website. The address bar shows 'corpus1.mpi.nl/ds/asv/?16'. The website has a dark blue header with navigation links: 'home', 'about', 'manual', 'register', 'user: anonymous', and 'log in'. Below the header, there are several search and action buttons: 'METADATA SEARCH', 'CONTENT SEARCH', 'BOOKMARK', 'MANAGE ACCESS', 'REQUEST ACCESS', and 'CITATION'. The 'CITATION' button is highlighted with a red circle. Below the buttons, the text 'Cite this resource' is followed by a link: 'http://hdl.handle.net/1839/00-0000-0000-0001-34DF-9@view', which is also circled in red. Below the link, there is a paragraph of text: 'Use the link above for citing this resource or (sub)corpus in a persistent way in your publications or for linking to it on web sites. Please have a look at the metadata description to find out which person(s) or project(s) should be mentioned as author.' and a link 'Show details...'. On the left side of the page, there is a sidebar with a tree view of language projects, including 'WelcomeToDOBES.html', 'Ach ', 'Akie', 'Aru languages', 'Awet ', 'Bainounk', '? Bakairi, Katxuyana and Mawe project', 'Bakola', 'Baure', 'Bayso and Haro', 'Beaver Archive', 'Bena Bena', 'Bezen', 'Cashinahua project', 'CELD Papua', 'Chaco languages', 'Mocovi', 'Tapiete', and 'Vilala'.

# Archives depositors

Archives depositors are users of the Archives as well as contributors.

Assumption: Archives depositor (for this presentation)

- Is a language researcher
  - Might or might not be Indigenous
    - Might or might not be a member of the community of study
  - Is collecting data under the requirement that s/he must "share" the data by putting it in an archive.
  - S/he is following all required ethics (IRB) protocols of the institution and relevant governments (Indigenous, national, etc.)
-

## Depositors - What materials will go in an archive

Goal: Find a balance between funder's data-sharing requirement and protection of Indigenous TK.

Questions to ask yourself:

- Should this item (story, history, myth, song, database etc.) go into an archive?
- Do I have the right to decide?
- If not, who does?
- Consider the balance between open/public access and protections of the Indigenous TK

**Carefully consider each resource and file before putting it in an archive - even if you got prior and informed consent**

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## Depositors - Archiving TK

"When Indigenous knowledge is removed from an Indigenous community, the community loses control over the way in which it is represented and used. These systems of knowledge may have evolved over many years and are uniquely bound up with Indigenous peoples' customs, beliefs, traditions, land and resources."

Terri Janke (2005, p. 97)

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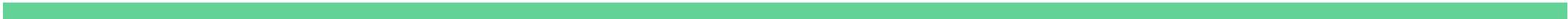
## Depositors - Archiving TK

**Document & respect protocols whenever possible:** Historic traditional reasons should be taken into consideration, e.g.

- esoteric or taboo language
- gender restrictions
- seasons for telling certain stories



**But consider the future:** What if the only records of the language are recordings of esoteric language? Should such materials be made accessible in order to save the language? Who should make that decision?



## Depositors - Archiving material under copyright

You might not own the copyright to some of "your" published materials (e.g., journal or book articles, books, handbook or encyclopedia entries).

- If you retained all your copyrights, you can put the work in an archive.
  - Some publishers allow the author to put (certain types of) PDF copies in an Institutional Repository (check to see if publisher will consider an archive to be an IR).
  - Write it into your author agreement/contract.
  - After publication, get permission from the publisher.
  - SHERPA/RoMEO - database of publishers' policies on self-archiving.
-

# Depositors - Cite your own archived data!

Depositors should cite their own data, just like they would cite their own book or article publications.

Reasons to cite yourself:

- To give proper credit to everyone involved in the research, including yourself
  - To make your research findable
  - To improve your citation metrics
-

# Bibliography and Links

- A full Bibliography is available [here](#).
- See also these [links](#) for further information.



# References

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Thank You!

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