

Protocol on Karuk Tribe's Intellectual Property Rights

Research, Publication and Recordings

I. Introduction

The purpose of this Protocol is to preserve the Karuk Tribe's ("Tribe") ability to protect the intellectual property rights of present and future generations of the Karuk People and to recognize the inherent tribal sovereignty that the Tribe asserts over all tribal knowledge, heritage, and cultural resources. As a result of acts of misrepresentation and appropriation of tangible and intangible culture, the Tribe has developed this Protocol for all activities that involve collaboration, consultation, and engagement with the Tribe.

The Tribe shall be recognized and consulted as the primary legal and cultural custodians in any projects or activities that will produce any intellectual property products. The Tribe does not seek to commoditize or commercialize its intellectual property or cultural heritage. Further, the Tribe asserts its age-old tradition of reserving certain domains of knowledge for rightful and culturally appropriate owners, as well as restricting access to this knowledge during certain chronological periods as dictated by time honored Karuk Law.

II. Definitions

1. **Research** includes work conducted in any subject area and extends to both individual and institutional study.
2. **Karuk Tribe** is a sovereign indigenous nation that acts through its elected governing body on behalf of the Karuk People which includes – members and/or descendants, families, villages, and communities.
3. **Projects** and/or **Activities** include, but are not limited to, research, publications, data collection, implementation, recording motion, visual sound whether oral, written, via multimedia or other mechanical devices discovered.
4. **Multimedia** includes any product derived from Karuk intellectual resources of text, sound, and/or images combined into an integrated product that can be transmitted and accessed interactively via digital machine readable form or computerized network.
5. **Karuk Resources Advisory Board** serves as the primary advisor to the Tribal Historic Preservation Office and Karuk Tribal Council on all matters relating to the protection, preservation, and perpetuation of Karuk cultural, spiritual and natural resources. The KRAB reviews plans, policies, and research project proposals on behalf of tribal departments and recommends policy amendments to the Karuk Tribal Council.
6. **Karuk Traditional Knowledge and Cultural Heritage** includes beliefs, knowledge (agricultural, technical, medicinal, ecological), movable and immovable cultural properties (human remains; sacred burial and prayer grounds), customary laws, traditions, human and genetic resources, seeds, medicines and knowledge of the

properties of fauna and flora, arts and artistic works, and other forms of cultural expression, handed down through the generations.[ii]

7. **Karuk Tribal Council** is the governing body of the Karuk Tribe. The members of the Karuk Tribe have delegated to the Karuk Tribal Council the authority and responsibility to exercise by resolution or enactment of Tribal laws all the inherent sovereign powers vested in the Tribe as a sovereign aboriginal people.

8. **Intellectual Property Rights** mean any and all (a) copyrights and other rights associated with works of authorship throughout the world, including neighboring rights, moral rights, and mask works, (b) trade secrets and other confidential information, (c) patents, patent disclosures and all rights in inventions (whether patentable or not), (d) trademarks, trade names, Internet domain names, and registrations and applications for the registration thereof together with all of the goodwill associated therewith.

9. **Intellectual Property Products** includes all original materials produced in the course of a project including but not limited to written materials, transcriptions, translations, photographs, recordings collected or produced by the individual and/or funding institution pursuant to this Protocol. These are considered to have been produced through consultation and engagement with the Karuk Tribe as the primary legal and cultural owners and custodians. Therefore they shall remain the sole property of Tribe unless otherwise specified in the proposal agreement (see Procedure 1.a.).

III. Procedure

All projects or activities must be submitted according to the following process:

1. **Draft Proposal**

An initial draft proposal should be submitted to the Karuk Advisory Board (KRAB) that addresses the following regarding the project/activity:

- a) **Purpose** – Describe the intended goal of the project/activity.
- b) **Risks** – Disclose all risks associated with or inherent in the project/activity, including risks to the physical and psychological well-being of individual human subjects, participants, and risk of deleterious impact on the cultural, social, economic, or political well-being of the Karuk Tribe.
- c) **Anticipated product of the project/activity** – What is the intended end-product (ex: documentary, published study, etc.)? What are the plans (pre, during, post project) for publications or commercialization of the product or research findings? What mechanisms will be put in place for providing the Karuk Tribe with full access to the product or research data findings for their own use?

- d) **Intended benefit to the tribal community** – Specific questions to be addressed include: What are the anticipated consequences or outcomes of the project? What groups will be consulted? Will there be any effects upon the community consulted or the larger Karuk Tribe? How does the proposal integrate the protocol outlined in *Practicing Pikyav*? What are the anticipated benefits for the Tribe as a result of the product or research findings?
- e) **Tribal Participant consent** - How will permission be obtained to use Karuk traditional knowledge, cultural heritage and cultural property as research subject matter. A mechanism for informed consent should be outlined in detail: an example approved by the Tribe is found in *Practicing Pikyav*. Informed consent may be required from an individual, a family, a village or the Karuk Tribal Government.
- f) **Compensation** – Demonstrate how “informants” or “subjects” of the project or activity will be justly compensated. Just compensation or fair return can include obtaining a copy of the research findings, acknowledgement as author, coauthor or contributor, royalties, copyright, patent, trademark, or other formats of compensation. The researcher and/or funding institution shall promptly notify the Tribe of any copyrightable material generated under this project or activity. Posting of a bond may be necessary to ensure compliance with terms of a project or activity which requires a formal contract. This bond will be returned upon satisfactory completion, as determined by the KRAB, of the project.
- g) **Privacy protection** – Address the issue of privacy and describe a mechanism whereby the privacy of the Karuk Tribe will be recognized and protected. Questions to be answered are: What issues or subject matter will the project or activity potentially or actually impact? What are the limits, parameters, or boundaries necessary to complete the project or activity?
- h) **Confidentiality** – The applicant shall provide assurance of confidentiality for the life of the project, indicating how confidentiality will be protected, indicating where raw data or materials will be deposited and stored at the completion of the project. Signing a confidentiality agreement may be required.
- i) **Recording devices** – Outline what recording devices will be used in the project. Recording devices include, but are not limited, to motion pictures cameras, audio/video recordings, smart phones, tape recorders, mechanical, computerized or multimedia technology (CDROM), maps, and hand drawings. The proposal should address a mechanism whereby the informants or subjects will understand clearly what the project plans to do – at present and in potential future use – with the recorded information before recordation takes place.

2. Review Committee

A Review Committee (RC) must be formed and its proposed composition must consist of, at the minimum, the following: (i) a local mentor/liaison; (ii) a Karuk tribal employee, and (iii) an experienced researcher/project leader.

3. KRAB Review

KRAB will undertake initial review of the draft proposal and, if the proposal is in accordance with the Tribe's policies and goals, will do the following:

- a) approve a local mentor/liaison for the RC; and
- b) send the RC the draft proposal to finalize into a six-page proposal with a plan that addresses data management.

4. RC Review

The RC has responsibility to recommend approval to the KRAB. The RC will receive copies of any parallel institutional review board (IRB) approvals, or approvals from non-IRB institutions (e.g. agencies).

5. KRAB Approval

Upon receiving the RC's recommendations and the Data Management Plan, KRAB shall review and made edits. KRAB's final step is to recommend the proposal and plan be approved by Karuk Tribal Council.

6. Review of Product or Research Results/Study

The proposal should demonstrate a process whereby the KRAB will have an opportunity to review and have input into the product or results before requesting publication from the Karuk Tribal Council. The final document must then find approval by the Karuk Tribal Council prior to publication. The purpose of this step is to assure that sensitive information is not divulged to the public or that misrepresentations can be corrected.

The Karuk People may share the right to enjoy or use certain elements of its cultural heritage, under its own laws and procedures, but always reserves a right to determine how traditional knowledge, cultural heritage, cultural property and intellectual property will be used. The Tribe asserts a collective right to manage the above.

7. Tribal Council Approval

The last stage for all approval is Karuk Tribal Council.

IV. Ownership

The Tribe reserves the right to:

- a) Prevent publication of intellectual resources which is unauthorized, sensitive, misrepresentative or stereotypical of the Tribe or harms the health, safety, or welfare of the Tribe in any way.

- b) Pursue tribal and nontribal legal avenues in any breach of policy, protocol or contract.
- c) Require deposit of raw materials or data, working papers or product in a tribally designated repository, with specific safeguards to preserve confidentiality.
- d) Assert full ownership or grant co-authorship of products or research findings.
- e) Deny a license or permit.

V. Indian Preference in Employment or Training

All project participants are required to comply with the Tribal Employment Rights Ordinance (“TERO”) which provides for employment and contracting preference for projects/activities occurring within Karuk Aboriginal Territory.

Pursuant to the TERO Ordinance, for all projects and activities that involve a funded contractual agreement, the independent contractor must acknowledge that a two percent (2%) TERO fee will be imposed on the gross value of any contract initiated within the interior/exterior boundaries of the Karuk Aboriginal Territory, provided that the total contract or annual gross revenues meet or exceed \$2,500.00.

VI. Sovereign Immunity

This Protocol is not intended nor will it be so interpreted to be a waiver of sovereign immunity of the Tribe, or their employees, officials and agents. Nothing in this Protocol subjects or limits the sovereign rights of the Tribe.

Project Collaborator, Signature: _____

Project Collaborator, Name Printed: _____

Date: _____

Intellectual Property Agreement Number: _____

[i] This Protocol draws upon many sources, among others the Hopi Cultural Preservation Office’s Protocol for Research, Publication and Recordings: Motion, Visual, Sound, Multimedia and other Mechanical Devices found at <http://www8.nau.edu/hcpop/ResProto.pdf> (retrieved on July 30, 2014).

The Karuk Tribe would like to extend its gratitude to Dr. Jane Anderson at New York University for her guidance and valued contributions.

[ii] Definition adapted from: *Intellectual and Cultural Property Rights of Indigenous and Tribal Peoples in Asia* (page 3); <http://www.refworld.org/pdfid/469cbf970.pdf> (retrieved July 24, 2014).