

**Returning Hopi Voices: Redefining Repatriation through Community Partnership**

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IN THE SHADOW OF THE GENERAL MOTORS BUILDING lay the Indian Village—a strategically positioned spectacle of Native life as seen by American settler society (Raibmon, 2005). The setting was the 1933 Chicago World’s Fair, titled “A Century of Progress.” In contrast to the other exhibits showcasing western technological advancement, indigenous people on display found themselves positioned within a historically authenticated “native” habitat, engaging in “traditional” performances of “Indianness.” In doing this, the Fair employed a method of referencing, of creating a point of origin through the Indian to measure the magnitude of what they believed was Western progress. Just as disturbing was the acceptance by the public and Indians alike that “Indianness” could be purchased, packaged, exhibited, and interpreted on demand outside of traditional authority and contexts.

The atmosphere at the Century of Progress Exposition also proved an ideal site for quick, simplified ethnographic research. Laura Boulton, an ambitious musician and scholar recently returned from her first ethnomusicological encounter in Africa, had determined to utilize the captive resource—in this case, Native peoples of the Southwest inhabiting the Village—for one of her first major field recording sessions, possibly as a project to launch a career at the nearby University of Chicago. For each session, she would unpack her new Fairchild recorder, demonstrate the device for any wary individuals by recording and playing back her operatically trained voice, and then turn the bell of the device on her interlocutors. She was both convincing and successful. Boulton’s recordings of Hopi performers at the fair, for example, include 54 songs from Hopi men, women, and children totaling nearly 2 hours of music and dialog. Seven years later, with the assistance of the Bureau of Indian Affairs, Boulton visited Hopi lands in person and recorded an additional 66 songs. When she had finished her project, she had frozen in time nearly 6½ hours of Hopi performances on aluminum and acetate disks.

About one year after Boulton had recorded her last Hopi song, she made plans to release her recordings commercially, and did so under the Folkways Records label, titling it simply, *Indian Music of the Southwest*. Mixed alongside songs of many other tribes in the album is a solitary Hopi Kōōyemsi, or “mudhead katsina” song—one that is not necessarily restricted to specific individuals within Hopi society, but one which holds meaning only within a very specific Hopi context. While it is unclear just how much revenue was generated from the sale of Boulton’s Southwest Indians recording, it is clear that no royalties are currently being sent to the performers’ children—the likely beneficiaries following the late performer’s passing—despite the fact that the recording remains for sale in Smithsonian Folkways catalog and available for download on its website.<sup>1</sup> It also appears that the recordings have been utilized from time to time by scholars interested in Hopi music, culture and religion, again without the knowledge of the descendants or the Tribe.<sup>2</sup> In a post-NAGPRA (Native American Graves Protection and Repatriation Act) world, one questions why indigenous intellectual property like Boulton’s recordings continue to provide income

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<sup>1</sup> Per interview with N. Monogya on Sept. 4, 2010, the son of one of the original performers, who had no knowledge of the release or the recording.

<sup>2</sup> The typed field notes to the recordings have multiple handwritten notes in various scripts, leading us to believe that the notes were utilized by researchers following Boulton’s edition, which she made near the end of her life. The Hopi Tribe Cultural Preservation Office had no knowledge of the Boulton Collection housed at Columbia University or that the duplication rights to the recordings were held by Columbia.

for record labels (albeit in small amounts) and research materials for scholars without fear of retribution from courts of law, professional organizations, and the Tribes themselves.

Holding and exploiting Hopi voices in institutions' collections without the consent of the Hopi Tribe and its villages and clans, or not providing fair compensation to the original performers and royalties to descendants presents both ethical and legal dilemmas. Consider the United Nations' Declaration of Human Rights of Indigenous Peoples (2007) which states, "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions . . . including . . . visual and performing arts" (UN 2007, Article 32, Section 1). The document also explains that "Indigenous peoples have the right to redress, by means that can include restitution . . . for the lands, territories *and resources* which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, or occupied, used or damaged without their free, prior and informed consent" (Ibid., Article 21, Section 1, emphasis added). Consider also that under U.S. law, the use of copyrighted musical material without obtaining permission from the copyright holder—except under doctrines of fair use or provisions for compulsory license—are liable for copyright infringement. Additionally, James Nason (2001, 2005) asserts that NAGPRA may also apply to recordings of the indigenous voice, creating a case for their return—along with the right to govern their use—to Federally Recognized Indian Tribes and other qualifying organizations. Yet, while Congress has pressured universities, museums, and other holding institutions to return indigenous remains and items of cultural patrimony, the repatriation of the indigenous voice—the return of recorded song, oral history, and other sonic material—has received only a minor treatment in academic literature and even less in intellectual property case law.

Though little academic literature exists on the subject of repatriating the indigenous voice, archives are currently invested in the repatriation process. According to Lansfield (1993), 28 of the 34 ethnomusicological archives he surveyed holding non-commercial field recordings were actively engaged in some form of repatriation. But what does it mean to repatriate the indigenous voice after it has been alienated from the domain within which it was created? This question lies at the center of our work with Laura Boulton's Hopi recordings. To answer this question, I first draw on prior work done to repatriate the Native voice. Following a brief discussion of these repatriation efforts, I then explain the methodology we are currently engaged with in the Hopi repatriation effort at the Center for Ethnomusicology at Columbia University and then share a few of the preliminary results from our work thus far.

### **Theorizing Repatriation of Native American Music**

The practical aspects of repatriation—in this case, the returning of recorded Hopi songs to their source of origin—presents a challenge: even if you could return previously performed sound to its culture of origin, to whom would you return these sounds and how would one go about such a project? Is repatriation simply the return of the archaic cylinders and disks upon which a live performance was once recorded to a different generation of Native people—especially one that may not be familiar with the contents of the recordings and have limited or no access to the outdated technology to play them? How does one go about determining who can rightfully control performance of a recording—especially those with culturally sensitive material contained in them—and make decisions on their duplication or commercial sale? At the same time, how might these recordings be of value to the indigenous group and/or future scholars? And, what about compensation for the unethical or unlawful use (commercial or otherwise) of an indigenous group's voice for the

many years it was held captive and/or exploited? Ongoing work by organizations like the First Archivists Circle have made great strides in providing the ground rules for how to engage indigenous groups and archives in repatriation of these kinds of materials (First Archivists Circle, 2007). Yet, much work remains to be done in developing effective methods for repatriating the indigenous voice.

In the last four decades several models have emerged for the repatriation of recorded sound, two of which I'd like to briefly highlight here as representative of many of those occurring in the field at present. Perhaps the first and most well known repatriation effort for recorded sound was started in the late 1970s by the Library of Congress's Folklife Center. Faced with deteriorating and antiquated recording media in their collection, a staff of ethnomusicologists and engineers converted many of the most fragile cylinders in LOC's collection to tape. After a decade of work, LOC then published a register of their holdings in hopes that Tribes would seek out voices of the past and request copies. The Folklife Center's work with the Omaha Tribe in the 1980s, for example, resulted in the co-production of an album of Omaha music extracted from the LOC's collection (Brady 1999, pp. 118-119). Indiana University's Archives of Traditional Music and many others across the world adopted LOC's model and, upon request, have assisted in making copies of field recordings in their collections available for individuals affiliated with indigenous groups.

In contrast to the effort by LOC's Folklife Center to repatriate copies of recordings, Smithsonian Folkways continues its effort to remedy years of unpaid royalties to indigenous people whose performances are found in their commercial releases. In its prime, Folkways records was one of the first and largest "World Music" labels, selling the indigenous voice commercially for decades. Following the acquisition of Folkways Records by the Smithsonian Institution, ethnomusicologist and former director of Indiana University's Traditional Music Archives, Anthony Seeger, began an effort to make Folkways more equitable toward the artists and communities whose voices filled their catalogs. Seeger's staff spent considerable resources determining the composers and performers on each of Folkways' recordings and began sending unpaid royalties to as many of these artists as could be found (Seeger 1994, p. 94). The project also entailed creating the necessary infrastructure within Western intellectual property systems to allow indigenous individuals and their beneficiaries to receive payments, even facilitating payments to community organizations instead of artists to more accurately reflect cultural intellectual property systems. Smithsonian Folkways also worked to remove objectionable tracks from certain albums. Additionally, Seeger required researchers hoping to release their field recordings with Smithsonian Folkways to have signed consent from recording artists including an agreement of how each performer would like royalties paid to them or their community. The notion of returned compensation allowed for the "repatriation" of what the UN codified in the declaration cited earlier: the fundamental right of indigenous peoples to receive fair compensation for the sale and use of their cultural property if desired.

### **The Impact of Indigenous Intellectual Property Discourse on Repatriation**

While these models seek to put music or monetary compensation back into the hands of indigenous individuals, they do little to engage the growing discourse of cultural intellectual property rights—a crucial dialog on Hopi. Of the many indigenous governments who have actively defended traditional rights to their intellectual property, the Hopi Tribal Council has empowered its Cultural Preservation Office to seek out Hopi intellectual property and request its return under Tribal Law. The 1994 Hopi Tribal Council resolution HR-94-107 determined that "archival records, including field notes, audio tapes, video tapes,

photographs, which describe and depict esoteric ritual, ceremonial, and religious knowledge, be placed under restriction by museums and other repositories for public access and *hereby are declared to be the cultural property of the Hopi people*” (Hopi Tribal council, 1994). Hundreds of letters were sent to holding institutions of Hopi cultural property requesting compliance with the resolution. As Leigh Kuwanwisiwma, director of the Hopi Cultural Preservation Office, explained, “Initially the reaction was mixed: some museums were gracious enough to honor that resolution . . . some museums outright said it was public domain, and would not honor the Hopi resolution” (L. Kuwanwisiwma, personal interview, September 1, 2009). While faced with compulsory compliance through NAGPRA of their tangible holdings, some museums insisted that Hopi intellectual properties in their collections remained their property, and therefore subject only to internal policies and the federal or state laws they perceived as applicable.

Criticisms mounted in the ethnomusicological literature of the inequities in copyright regimes that took no account for cultural ownership of intellectual properties. Howes (1995), Mills (1996), Farley (1997), and Nason (2001) were among a host of legal scholars who joined in the critique, calling for policy changes to reflect the needs of indigenous groups to control their intellectual property. Among the many issues raised were copyright’s requirements that “music” be authored by an individual or governmentally recognized entity and “fixed in a tangible medium,” and that copyright could last only a relatively short period of time during which the material could potentially be exploited under “fair use” doctrines. Activism by aboriginal groups, significantly in Australia and Africa, succeeded in either defending claims to cultural intellectual property within state court systems or garnering support for new legislation including taxes on sales of indigenous music which then return funds to organizations that fortify indigenous culture (Farley 1997).

However, efforts to empower indigenous communities through state intellectual property mechanisms are not without their dissenting opinions. In his 2003 book *Who Owns Native Culture?* Michael Brown documented the weaknesses of new “Native-friendly” intellectual property policies and judicial stances setting forward a strong critique. Are Western intellectual property regimes really the best way to mediate debates over the misuse of indigenous culture? Brown suggested that cultural properties, including intangible properties, be handled within a space of cross-cultural education and informal negotiation, ultimately allowing cultural intellectual properties (e.g. indigenous art forms) to inhabit the intellectual “commons” rather than being the subject of litigation within the Western legal system or censorship by indigenous groups (see Brown 2003). While Brown’s viewpoint remains highly contested by advocates of Tribal sovereignty (see Simpson, 2007), it nonetheless raises questions as to whether “owning” Native culture is in fact the ultimate goal of repatriation—or is there something deeper worth perusing in these efforts?

### **A New Approach to Repatriation**

In the last half-decade, the Center for Ethnomusicology at Columbia University has taken a proactive approach to the return of indigenous voices from its archive, termed “community-partnered repatriation.” Researchers Chie Sakakibara, Postdoctoral Research Fellow at Columbia University’s Earth Institute, and Aaron Fox, Associate Professor and Chair of Columbia’s Department of Music conducted the preliminary work behind community-partnered repatriation in Iñupiaq communities in and around Barrow, Alaska using a series of recordings made by Laura Boulton in the 1940s. The model implemented by Fox and Sakakibara differs from past models in two ways. First, the model challenges past notions of repatriation as a one-time, indigenous-community-initiated transaction where

recordings are simply duplicated and given to individuals affiliated with Tribes. Their hypothesis is that “the repatriation of such resources is best conceived as creating an enduring and reciprocal partnership between Native communities and institutional archives” (Fox and Sakakibara, 2009; includes subsequent quotes). Since their first trip to Alaska, Fox and Sakakibara have been actively involved in Iñupiaq community initiatives, disseminating the recordings both on disk and online, documenting the historical/cultural context for each recording with Iñupiaq elders, and giving presentations about the recordings throughout the community. As a result, the researchers have witnessed the revival of traditional song and dance, the emergence of community research projects including language revival and climate-change research, and the creation of new Iñupiaq song based on voices from the past. Second, the model addresses the need for Iñupiaqs to determine the use of their intellectual property, not simply being recipients of back royalties or parties to future University-negotiated contracts. Recognizing that the recordings are the cultural property of the Iñupiaq people, the duplication rights to the recordings currently held by Columbia are being transferred to the Iñupiaq community, empowering the community to seek out ways to utilize the recordings for their benefit without being encumbered by academic bureaucracy. (Fox, author’s interview, 13 May 2010).

### **Developing a Methodology to Repatriate Hopi Voices**

In 2008 I began work to repatriate the Laura Boulton Hopi recordings I described earlier in this paper. I based my work in the model developed by Sakakibara and Fox, but also borrowed from the emerging literature on social networks to formulate a method for the return of these recordings and the applicable rights to my people.<sup>3</sup> I asked, to whom do these recordings rightfully belong and what should be done with them? In doing so, I took on the challenge of answering the question of ownership from both Hopi and U.S. perspectives, seeking to reconcile the two. Knowing that Hopi knowledge is closely guarded by clans, I combined my academic/legal research with group discussion and individual interviews drawing from experts from the often-intersecting circles of Hopi traditionalism and various academic disciplines. With the help of a supportive social network on Hopi, I was also invited to present recordings and hold discussions on the topic of repatriation with two larger groups, one including Hopi elders from each Hopi village (the Cultural Resources Advisory Taskforce Team) and five Hopi Language and Culture class groups of various ages at Hopi Jr. / Sr. High School. I then analyzed information gathered from these varied sources to understand 1) how the rights and obligations pertaining to Hopi and U.S. concepts of intellectual property might work together to support the repatriation of the Laura Boulton Hopi collection, and 2) what were ways in which recorded Hopi songs could benefit community members. My working hypothesis was that by understanding Hopi intellectual property processes and fashioning U.S. intellectual property laws around them, we could effect a more empowering repatriation effort rather than instilling division within the either the Hopi or Columbia communities, hopefully leading to mutually beneficial Hopi-Columbia initiatives.

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<sup>3</sup> Burt, a leading scholar of social networks, explains that social capital, or the value of a social network, “is a thing owned jointly by the parties to a relationship. No one player has exclusive ownership rights” (Burt, 1995, p. 10). Allowing the repatriation of the recordings to be at the center of a social network rather than in the hands of a political faction seemed both empowering and essential for the success of this project within a historically divided community (see Whiteley 2008).

A comprehensive study of the U.S. legal status of the recordings was conducted utilizing applicable case law, federal statutes, and interviews with intellectual property experts. The results presented an interesting catch-22. Federal copyright law lends little help to Hopi individuals for the protection of their songs from unwanted use (see Howes, 1995). However, under Arizona State common law, copyright in the underlying musical composition of several of these recordings still belonged to the original Hopi composers or their next of kin, protected—ironically—because they were never written down in a tangible medium by the composer, and the composers’ permission was likely never given for the songs to be recorded.<sup>4</sup> This common-law copyright is substantial enough to provide grounds for a court-ordered injunction against an unauthorized use and/or a claim for damages. The holder of common-law copyrights, unlike federal statutory copyrights, can also prevent unwanted publication of the songs perpetually. The catch-22 underlying the use of common-law copyright lies in the nature of the common law: it is not a written set of statutes, but a default system of judicial rule based on centuries of court decisions. In order to claim common-law copyright, one must accept the English common-law upon which Arizona common law is based as the default law of the land—a finding that unfortunately subverts Hopi sovereignty. And even if there were a substantial claim for copyright in the recordings under the common law, the copyright would have passed from the singer to his spouse and children under applicable estate laws upon his death, a notion which is inconsistent with the way songs pass from one generation to another within Hopi traditional society as will be discussed later in this paper.

The reliance on copyright law as a default way to determine ownership of Hopi sound recordings seems to counter the traditional governance of song in Hopi culture. Interviews with traditional Hopi composers, performers, and cultural educators found that Hopi ceremonial songs, like many of those found in the Boulton recordings, have both individual and collective rights assigned to them. For example, one interviewee explained, “Once [a ceremonial song] is performed, it belongs to the community. Composers know going in that once the song is out, they don’t have any possession over it” (Author’s interview). Other individuals emphasized that certain songs could only be performed by or in the presence of individuals within their society. Using the example of ritual songs of the Snake society in a given village, Leigh Kuwanwisiwma, traditional composer and director of the Hopi Cultural Preservation Office explained, “the ritual snake songs, the songs that [the Snake society members] sing, are under *custody*—*they are cultural property*—[by] those that are of esoteric societies” (Author’s interview, emphasis added). Therefore, there are multiple classes of Hopi songs, each with its own system of governance, some based within village leadership and others based within individual kiva societies (see summary of these findings in Table 1). In contrast to U.S. concepts of intellectual property, interviews revealed a village- or society-centered concept of ownership exists rather than an individual- or even family-centered concept of ownership.

By reassigning the federal and state intellectual property rights according to the Hopi intellectual property structure, traditional systems can be reinforced allowing the Hopi voice to be protected from exploitation, misuse—or further silence within a distant archive. While each recording will eventually be evaluated on a case by case basis in the coming months, the guidelines listed here, informed by Hopi religious and political leaders, scholars, artists, and cultural educators, will act as a framework for transferring copyrights from Columbia University to Hopi under traditional intellectual property frameworks.

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<sup>4</sup> See the full legal analysis in Reed 2009

**Table 1: Proposed repatriation of copyrights**

Type of Music	Examples from Boulton Collection	Ideal Copyright Holder
Public Dances	Butterfly, Buffalo dance songs	Village of origin, held in trust by village chief or other representative
Religious society songs, performed for village	Flute, Snake, Basket songs	Village religious society/organization (If no longer in existence, to the village as above)
Religious society songs, not publicly performed	Flute, Snake songs	Society leader (If society is no longer in existence, to the village)
Non-Traditional Songs	Comanche songs, “Pow-wow” songs	Descendants of original performers (or the original composer if performers are unknown), if both are unknown, the rights to the songs should remain with Columbia University.

**Returning Recorded Hopi Songs**

I had the privilege of holding discussions with several individuals and groups on Hopi to seek out ideas for the utilization of the recordings. During conversations with several groups of students from Hopi Jr./Sr. High School, I found that these youth were concerned that the recordings would be simply transferred from one archive to another. In response, several students made recommendations along these lines: “Do something that everyone can enjoy. Put it on the radio, Internet, TV or whatever. I think everyone should hear this kind of music.” Several students felt like widely sharing Hopi music could benefit non-Hopi as well. One student explained, “Keep [the recordings] for future use, let people listen because anybody could listen to them to bring rain and make people happy.” Another student replied, “Even though some people aren’t Hopi they should still listen to these songs. They might be interested in learning more about the Hopi music.” Finally, one student’s succinct response showcased the multiple formats for listening that Hopi students see for the repatriated recordings: “Give it to the kiva chief. Sing it to the people. Put them in your iPod.”

There was also considerable interest among Hopi elders on the Cultural Resources Advisory Task Team (CRATTI) about working with the recordings. The opinion given by these traditional/religious leaders was overwhelmingly in favor of returning the recordings and the copyrights to the Hopi people. Several of the songs presented were familiar to CRATTI members, and some have perpetuated almost identically through the collective memory of kiva societies and villages. CRATTI members were able to recognize and identify many of the voices and songs on the recordings. Perhaps the highlight of the event was the presentation of the kööyemsi (mud head katsina) songs recorded by Laura Boulton in



Hoatvela (Hotevilla) around late July of 1940. Nearly every member of CRATT joined in to sing, showcasing how many of the songs captured by Boulton continue to be a vibrant part of Hopi life nearly 70 years later.

Interviews with individual leaders within the Hopi community brought up a number of ideas for utilizing the recordings. Developing Hopi language materials was most often mentioned. According to interviews with individuals connected to the Hopilavyi Project, an effort to promote the use of Hopi language in Hopi schools, learning Hopi songs assists children in the language acquisition process and the use of historic songs can provide instructors with vocabulary no longer spoken. KUYI Hopi Radio staff members presented a second opportunity to utilize the recordings, suggesting that we collaborate in developing traditional programming with the assistance of elders and other experts in Hopi song. Tribal Archivist, Stewart Koyiyumptewa, suggested that we collaborate in creating oral history listening and recording centers on each of the Hopi mesas, where individuals could come to hear and learn from the recordings, and also contribute their own stories, ideas, and songs to add to the growing body of Hopi oral histories held by HCPO.

A number of practical suggestions were presented by Hopi community members that will be implemented through the distribution of select recordings to various social service organizations and Tribal entities. The Office of Elderly Services suggested that it could make presentations of songs from the Boulton Collection at Hopi elderly centers during mealtimes each day. The Hopi Grants and Scholarship Program suggested that a complete set of the recordings be placed in the new Hopi Tribe mobile library as a reference. Finally, several students and other interviewees suggested that the recordings be made available for school-wide traditional dance performances on “Indian Day” in the fall each year, allowing all students to learn and perform the songs regardless of cultural or village affiliation.

## **Conclusion**

Returning the indigenous voice from the archive to the next generation of indigenous people, I argue here, can become more than the duplication and/or transfer of recording media from the archive’s shelf to that of the tribal preservation office. As the item being repatriated is not simply a historical object, but a “performable” voice, this type of repatriation requires discussion around returning intellectual property rights to the recordings. In the case of the Laura Boulton Hopi collection, repatriation of the Hopi voice contained thereon requires an understanding of how Hopi song is “owned” by Hopi and the archive, so as to work out a reconciliation of the two intellectual property systems. Repatriation of the indigenous voice need not be transactional in nature. I advocate for a posture of community partnership and the development of social networks surrounding each unique project of repatriation, allowing for a dialog-rich formation and implementation of community-centered goals surrounding the return of these historic Native voices. In this way community-partnered repatriation can become a more effective and equitable means for engaging indigenous voices from the past and provide mutually empowering tribe-university relationships well into the future.

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