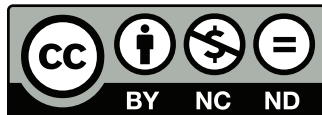


THINK BEFORE YOU APPROPRIATE

Things to know and questions to ask
in order to avoid misappropriating
Indigenous cultures

A guide for creators and designers

Creative Commons license:



<https://creativecommons.org/licenses/>

Please cite as:

Intellectual Property Issues in Cultural Heritage Project, 2015. Think Before You appropriate. *Things to know and questions to ask in order to avoid misappropriating Indigenous cultural heritage*. Simon Fraser University: Vancouver.

About this guide

People and cultures have always exchanged and borrowed ideas from each other to create new forms of art and symbolic expression. Whether intentionally or not, most if not all human creations reflect varied sources of inspiration.

Why, then, are some products negatively labelled “cultural appropriation” or their creators accused of disrespecting the very cultures they found inspiring? And why do products inspired from Indigenous cultural heritage seem to spark particularly strong reactions and pushback?

This guide unpacks these important questions. It provides advice to designers and marketers on why and how to avoid misappropriation, and underlines the mutual benefits of responsible collaborations with Indigenous artists and communities.

What is “cultural heritage” and when is it being “misappropriated”?

Broadly speaking, *“cultural heritage”* refers to elements that are common to a given group because they are culturally meaningful, connected to shared memory, or linked to collective identity.

“Tangible heritage” refers to the material products of culture, such as objects and architecture. *“Intangible heritage”* refers to cultural expressions, practices, and knowledge including language, dances, stories, designs, and techniques.

At its most basic, *“appropriation”* means to take something that belongs to someone else for one’s own use. In the case of heritage, appropriation happens when a cultural element is taken from its cultural context and used in another.

In this sense, appropriation occurs very frequently, as people and cultures exchange things and borrow ideas from each other all the time to create new forms of art, technology, and symbolic expression. However, this common human behaviour also has a dark side.

“Misappropriation” describes a one-sided process where one entity benefits from another group’s culture without permission and without giving something in return.

This becomes even worse when it involves intentionally or unintentionally harming a group through misrepresentation or disrespect of their culture and beliefs. Misappropriation can also entail considerable economic harm when it leads to profiting from the use of a cultural expression that is vital to the wellbeing and livelihood of the people who created it.

Not everyone has the financial and human resources that luxury brands have at their disposal to fight imitations and counterfeits.

Misappropriation is harder to counter when there is an imbalance of power in favour of those who are inspired by a particular cultural expression, to the detriment of those who provided this source of inspiration. Systemic imbalances of power are one reason why Indigenous peoples tend to have strong opinions about cultural appropriation. Due to the laws and policies that were imposed on them by non-Indigenous governments, they have had little say over their own affairs, including over the practice and use of their cultural heritage. As a result, misappropriation of Indigenous forms of expression has been particularly widespread and harmful, hence the strong pushback as Indigenous peoples seek to regain some control.

Why is following existing Intellectual Property laws usually not enough?

Many individuals and businesses rely on copyright, trademarks, patents, trade secrets or other aspects of Intellectual Property (IP) law to protect their creations against misappropriation. If they can afford to engage in this lengthy and costly process, that is what artists and brands do when they feel their ideas or products are being copied without their permission. When it comes to cultural heritage, however, ensuring protection tends to be more complicated. IP laws are designed to protect an individual's creations for a limited time span, whereas cultural practices and expressions are developed collectively over many generations. Furthermore, IP laws usually reflect the worldview that is dominant in society, which is rarely an Indigenous viewpoint.

The Navajo Nation owns 86 "Navajo" trademark registrations in order to prevent non-Navajo designers from implying a connection between their products and the Navajo Nation when none exists. In addition, some Navajo weavers register their designs with the U.S. Copyright office. However, others refuse to do so for cultural reasons: from a Navajo perspective, registering these designs under United States IP laws would mean staking an individual claim to something that has been handed down in a family or clan for generations.

However, the fact that most IP laws do not adequately protect Indigenous cultural expressions does not mean they automatically fall into the category of “public domain,” available for everyone and anyone to draw from. Customary laws that are in effect in Indigenous communities dictate specific rights, responsibilities, and cultural obligations. These regulate what can and cannot be used, by whom, and under what circumstances. In other words, it is not that Indigenous cultural heritage isn’t protected at all; rather, the problem is that many people are unaware of, or choose to ignore, these rules.

Why, then, don’t Indigenous people turn to nationally or internationally recognized laws and accords to avoid this problem? In some cases they do, adapting legal provisions and relying on international declarations to protect their rights as best they can. However, in all too many cases, these instruments simply do not provide adequate protection, and sometimes they can even be at odds with Indigenous laws and principles.

On the North American Northwest Coast, Indigenous customary laws limit the representation of crest designs by certain groups of individuals, families, or clans. As a result, only specific people in the community are allowed to depict certain beings and tell certain stories. Being a steward of tangible and intangible heritage is a key component of a person’s identity, and these responsibilities are passed on between generations.

Yet it is very common for Northwest Coast images to be reproduced by companies in disregard of these rules. For instance, a company may have relied on Canadian law to determine that an image had fallen into the public domain fifty years after the passing of the person who created it. According to Northwest Coast customary laws, however, this kind of practice can be likened to both property and identity theft.

What makes for a responsible creative collaboration?

In order to avoid misappropriation, it is necessary to engage in creative collaborations with Indigenous partners that go beyond “cultural advising” and do much more than merely asking for advice from an Indigenous person. Adhering to the following core principles can help ensure that you are engaging with Indigenous partners in a respectful and responsible manner.

Free prior and informed consent

When initiating a collaboration, present your goals clearly. Make sure that those giving consent do so freely, without feeling pressured and with full understanding of the consequences. Ensure that they are truly in a position to make decisions, and are recognized in their community as having the necessary knowledge and authority on the matter at hand.

Shared control over process and product

Build a relationship in which your partners are comfortable with how much input and control they have over the goals, approach, and final outcomes. Recognize that, due to others’ appropriative behaviours in the past, you may have to work long and hard to build a trusting and balanced relationship.

Acknowledgement and attribution

Make sure you identify those you work with, and describe the nature of your collaboration clearly to your consumers. Even the most responsible collaboration can seem suspicious if its nature is not communicated clearly. Using ambiguous wording that misrepresents practices in order to avoid negative attention is a sure way to breach consumer trust, and can even constitute false advertising under the law.

Respect for cultural differences

Take into consideration that the worldview and experiences of the people whose cultural heritage inspires you may differ from yours. Ensure that your approach isn't at odds with or, worse, threatening to their values and practices, and take steps to adapt your process and objectives accordingly.

Reciprocity and benefit-sharing

Work with your partners to find an appropriate balance between what you are receiving and what you are giving in the exchange. This includes negotiating monetary compensation for all parties involved, as well as discussing and sharing other benefits that may come out of the collaboration.

What are the costs and risks of misappropriation?

For you and your company:

Discrepancies between your practices and the values you want to be associated with

Negative campaigns and calls to boycott your business

Costs of removing or modifying a line of products, both online and in stores

Lawsuits and other legal challenges

For Indigenous artists and communities:

Reinforcement of stereotypes that are the source of discrimination

Misrepresentation of Indigenous peoples and their cultural expressions, undermining efforts to educate the public about their histories and cultures

Heightened competition for artists and artisans who have been developing these cultural expressions, generation after generation

Diminished economic resources, impacting not only individual livelihoods but also community efforts to ensure cultural perpetuation

Diminished value, as what is considered culturally important or even sacred becomes commonplace, commercialized, or cheapened as “pop culture”

What are the benefits of taking part in a responsible collaboration?

To you and your company:

Less risk of your products causing offense or harm to Indigenous artists and communities, and less risk to your personal or company credibility

Greater cultural richness and relevance from higher quality renditions and more culturally informed interpretations of that cultural heritage

Greater authenticity and an ability to stand out in the mainstream market of imitations and copies

Opening your business to the market of the artists' networks and communities

Brand association with progressive efforts to counter stereotypes about Indigenous peoples

To Indigenous artists and communities:

Opportunities to counter stereotypes to a broad audience and consumer base

Opportunities for public education about history and culture at a wider scale

Heightened public recognition of community heritage

Artist exposure to a wider audience

Increased economic resources to support individuals, as well as community efforts to ensure cultural perpetuation

How can you contribute to the ethical treatment of Indigenous cultural heritage?

Be mindful of your approach and practices

In order to avoid misappropriation, it is important to critically reflect on why you are turning to Indigenous cultural heritage for your inspiration and business success. Here are some of the reasons that people commonly give for engaging in cultural misappropriation, and why these warrant scrutiny.

"It is trendy in my industry, therefore I see it as a good business opportunity"

If you see the use of Indigenous cultural heritage as an easy way for you and your brand to gain popularity, you can be sure of one thing: you are not alone. Precisely because this is a trend, it will likely not help you position yourself as original, innovative, and forward-thinking. Two scenarios are possible: 1) your work will go unnoticed because it rides a very crowded wave; and 2) your work will get noticed, in which case you will also catch the attention of those who will consider it misappropriation, likely causing you grief as well as time and money.

"I want to celebrate Indigenous peoples and their creativity"

Would you celebrate your friend's achievements without inviting them to participate in the party? By using Indigenous cultural heritage without working with Indigenous people, you are essentially implying that they are either unavailable for, or unworthy of, collaboration. This could not be farther from reality. There are thousands of talented Indigenous artists across the country you could potentially partner with. At a minimum, such a relationship will bring more meaning and depth to your work and creative process. As with any collaborative process, you will have to work together to define roles and find a common vision. However, these efforts will be rewarded with the creation of products enriched by a true exchange rather than a one-sided interpretation.

"I would like my work to reflect a connection to the Indigenous history and culture of where I live"

A first step toward making this kind of acknowledgement truly meaningful is to approach people who belong to that community. They can then direct you to recognized culture stewards who can guide you on how to best do this. They might suggest actions other than using Indigenous motifs, such as: including an acknowledgement on your labels and website; arranging for Indigenous welcome protocols at the start or end of events you organize; sponsoring or participating in their community's activities; directing some of your company's profits to a community fund or initiative... Or, if you specifically want to make this acknowledgement come across visually or conceptually in your brand and products, they may agree to help you do this in a respectful way, by collaborating directly with a community artist for example. In any case, starting a conversation first, rather than seeking approval after the fact, is much more likely to result in a positive response and initiate the kind of connection you wanted to acknowledge in the first place.

Learn to recognize and avoid misappropriation

The following pages contain illustrations of various kinds and degrees of misappropriation. While these examples are fictional, they are directly inspired from real-life cases and raise some of the most common issues associated with Indigenous-inspired products. These should help you check your own products for signs of misappropriation, as well as recognize them in other designers' or companies' products.



A rug depicting a tipi and a totem pole...

<i>Misrepresents</i>	Tipis are built by North American Indigenous Peoples of the Plains, whereas totem poles are carved on the Northwest Coast.
<i>Reproduces stereotypes</i>	This design uses images that perpetuate the idea that Indigenous Peoples are all one and the same and live in the past, whereas there are important differences among them, and their contemporary experiences are diverse.
<i>Commodifies without contributing</i>	The rug's commercialisation does not benefit Indigenous people in any way even though the company who makes them capitalized on the popularity of Indigenous imagery.
<i>Does not present evidence of a collaboration</i>	The product tag attributes the rug to a "Native Iowan" but in fact it was designed by someone born in Iowa without Indigenous ancestry. The wording is intentionally misleading.

RISKS The rugs can be flagged as contravening the U.S. Indian Arts & Crafts Act, which prevents the false representation of a product as Native American. Media coverage of the resulting suit would lead the rug manufacturer to be publicly associated with the perpetuation of stereotypes.



A Northwest Coast-style killer whale logo for the Vancouver Residents for Clean Oceans Association...

<i>Imitates an Indigenous style</i>	The logo's design uses all of the typical characteristics of Northwest Coast art – colours, shapes, animal subject.
<i>Does not present evidence of a partnership</i>	The information provided by the organization does not indicate any partnerships with a local Indigenous community.
<i>Does not present evidence of a collaboration with an Indigenous artist</i>	The information provided by the organization states that the logo's designer was "inspired by" Northwest Coast cultures.

RISKS Failing to ask an Indigenous artist to create the logo and resorting to imitation instead represents a missed opportunity to start building a positive relationship with Indigenous stakeholders whose support could be very valuable to the organization in its fight against ocean pollution.



A headdress-shaped pendant, marketed under the brand name “Squaw Fashion” ...

<i>Misrepresents</i>	The type of headdress depicted is specific to men’s ceremonial dress.
<i>Reproduces stereotypes</i>	The term “squaw” is derogatory and evokes sexual violence against Indigenous women.
<i>Commodifies without contributing</i>	The sale of these pendants does not benefit Indigenous people in any way even though the company who makes them capitalized on the popularity of Indigenous imagery.
<i>Shows blatant disrespect for sacred elements</i>	These headdresses play a very important role in the spiritual life of the communities from which they originate.

RISKS The release on the market of pendants like these typically provokes intense and immediate backlash on social media, including calls to boycott. Such controversies tend to get significant press coverage, often leading the designer to pull their products from the shelves and issue an apology.



A leather hat with beaded designs...

Credits a particular Indigenous artist, but may not be a collaboration

The product tag credits a particular Indigenous bead artist. However, the level of involvement and control of the artist in the design process isn't made clear.

Commodifies

The sale of these hats may benefit the artist, but it is unclear to what extent, since the type of remuneration she receives isn't specified.

RISKS Even though this company may have a good working relationship with the artist, the lack of information about the nature of the collaboration can make some skeptical consumers refrain from buying the products, left wondering if she is being appropriately remunerated, and what her working conditions may be.



A board game about Māori warriors...

Misrepresents

While the names used may seem accurate, their spellings are simplified to leave out Māori phonetics such as ā, ē, and ō. Also, the board design is an assortment of “ethnic” motifs, some of them clearly not Māori.

Shows inadvertent disrespect for sacred elements

The game creators wanted to instill respect for Māori warriors among the wider public, but some of the names they used are those of deities not suitable for non-sacred game figurines.

Presents evidence of the company seeking permission, but through inadequate channels

The game creators got the approval of a Māori elected official for their project. However, this person is not a recognized culture steward, and therefore did not have the appropriate knowledge and authority to grant permission.

Does not constitute a collaboration

Once the game creators thought they had obtained permission to go forward, they relied solely on information and images by non-Māori scholars and designers instead of pursuing a collaboration.

RISKS The outcome is at odds with the intention: while the game creators sought to develop a game that would promote a greater respect of Māori warriors, the lack of proper partnership led the final product to include content that is inaccurate and inappropriate for use in a game.

With all of this in mind, we encourage you to *think before you appropriate* by asking yourself the following questions:

Does my project truly require the use of Indigenous cultural heritage?

Am I basing my work on accurate knowledge and representations of Indigenous peoples and their cultural heritage?

Am I sure that my work in no way reproduces stereotypes about Indigenous peoples?

Am I sure that my work does not show disrespect for the beliefs and worldviews of the Indigenous peoples whose cultural heritage inspires me?

If the answer to any of the first five questions is either ***“no”*** or ***“I don’t know”*** then we recommend that you halt your use of Indigenous cultural heritage.

If you are able to answer all of them with a resounding **"Yes"**, here are two additional questions you should seriously consider before continuing...

*What kind of **relationship with living Indigenous peoples** does my approach and resulting work reflect?*

*If I embark on a project that is inspired by Indigenous cultural heritage, what steps will I take to ensure that it leads to a **respectful and responsible collaboration**?*



Perpetuation, 2006.

Used as the IPinCH logo with permission from lessLIE, Coast Salish artist and IPinCH associate.

About IPinCH

The Intellectual Property Issues in Cultural Heritage (IPinCH) project is an international research initiative based at Simon Fraser University, in British Columbia, Canada. Our work explores rights, values, and responsibilities tied to material culture, cultural knowledge and heritage.

IPinCH is a collaboration of scholars, students, heritage professionals, community members, policy makers, and Indigenous organizations across the globe.

This booklet is an initiative of IPinCH's Commodification of Cultural Heritage Working Group, which focuses on understanding how the marketing of heritage affects cultural and economic sustainability in Indigenous communities.

For more information: www.sfu.ca/ipinch/