

Karuk Tribe
Protocol with Agreement for Intellectual Property Rights of the Karuk Tribe
Research, Publication and Recordings

The purpose of this Protocol with Agreement is to protect the Karuk Tribe's rights to privacy and Karuk Tribal Members' and Descendants' rights to individual and collective intellectual property. As a result of acts of misrepresentation and appropriation of tangible and intangible culture, the Karuk Tribe has developed this Protocol with Agreement [i] specifically for all projects and activities that involve collaboration, consultation and engagement with the Karuk Tribe. The aim is to protect the rights of present and future generations of the Karuk People and to recognize the inherent tribal sovereignty that the Karuk Tribe asserts over all tribal knowledge, heritage and cultural resources. This Protocol with Agreement is to be implemented in all future authorized collaborations.

The Karuk Tribe shall be recognized and consulted as the primary legal and cultural custodians in any projects or activities that will produce any intellectual property (property) products. These projects will be reviewed and upon approval of KRAB, forwarded to Tribal Council with their recommendation prior to the permit process, release of information, and other contractual agreements, the Karuk Tribal Council will have final approval.

The Karuk Tribe does not seek to commoditize or commercialize its intellectual property or cultural heritage. Further, the Karuk 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.

Definitions:

1. **Research** includes work conducted through social science, science and humanities strands, including, not limited to, ethnology, history, linguistic, biogenetic, medical, behavioral, ethnobotany, agronomy, ecology, anthropology, archaeology, and microbiology.
2. **Karuk Tribe** includes Karuk individuals – members and/or descendants, families, villages, communities, Karuk Tribal government and the Karuk People as a whole.
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 or yet to be 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.

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5. **Karuk Resources Advisory Board** serves as the primary advisor to the Tribal Historic Preservation Office and 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. Upon recommendation from the RC and the KRAB, the Karuk Tribal Council reserves the right to grant co-ownership of Intellectual Property Products.

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.

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.

8. **Intellectual Property Products** includes all original materials produced in the course of a research project including but not limited to written materials, transcriptions, translations, photographs, recordings collected or produced by the researcher and/or funding institution pursuant to this Protocol with Agreement. 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.). In many instances, the Karuk Tribal Council will grant co-ownership and/or appropriate licenses to the researcher and/or funding institution for future use including research, education and publication.

Procedure:

1. All projects or activities must be submitted in proposal format and shall address, at minimum, the following:

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a. **Intent and benefit to the Karuk Tribe:** The proposal should clearly outline and discuss the intent and benefit of the project or activity to the Karuk Tribe. 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? What are the plans (pre, during, post project) for publications or commercialization of the product or research findings? How does the proposal integrate the protocol outlined in *Practicing Pikyav: A Guiding Policy for Collaborative Projects and Research Initiatives with the Karuk Tribe*? What are the anticipated benefits for the Karuk Tribe as a result 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? The proposal must include an agreement to share copyright on the product or research data findings in equal portions with the Karuk Tribe.

b. **Review Committee:** A Review Committee (RC) must be formed, which must include a local mentor/liaison (approved by the KRAB), a Karuk tribal member, and an experienced researcher/project leader. The RC will receive and approve a six-page (maximum) project proposal and Data Management Plan and 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) and be ensured adequate time and opportunity to review final written and visual materials prior to publication.

c. **Risks:** The proposal shall disclose all risks associated with or inherent in the project or 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.

d. **Tribal Consent:** The proposal should address a mechanism used to obtain permission to use the Karuk people and their 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 Karuk Tribe is found in *Practicing Pikyav: A Guiding Document for Collaborative Projects and Research Initiatives with the Karuk Tribe*. Informed consent may be required from an individual, a family, a village or the Karuk Tribal Government.

e. **Rights to Privacy:** The proposal shall address the issue of privacy and describe a mechanism whereby the privacy of the Karuk Tribe will be recognized and protected.

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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?

f. **Confidentiality:** Signing the Tribe's *Project Collaborator Confidentiality Agreement* may be required to assure confidentiality. With this, 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, and indicating the circumstances in which the contractual or legal obligations of the applicants will constitute a breach of confidentiality.

g. **Use of Recording Devices:** The proposal shall 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.

h. **Ownership:** The Karuk Tribe reserves the right to:

1. Prevent publication or reproduction of intellectual resources which is unauthorized, sensitive, misrepresentative or stereotypical of the Karuk Tribe or harms the health, safety, or welfare of the Karuk Tribe in any way.
2. Pursue tribal and nontribal legal avenues in any breach of policy, protocol, agreement or contract.
3. Require deposit of raw materials or data, working papers or product in a tribally designated repository, with specific safeguards to preserve confidentiality.
4. Assert full ownership or grant co-authorship of products or research findings.
5. Deny a license or permit.

i. **Fair and Appropriate Return:** The proposal shall demonstrate how Karuk Tribal Members and Descendants as “informants” or “subjects” of the project or activity will be justly compensated. Just compensation or fair return includes, but is not limited to, 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.

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j. **Indian Preference in Employment or Training:** according to our TERO Ordinance[iii], in all phases of the project or activity, including both on and off Aboriginal Territorial phases, the order of priorities in Indian Preference shall be:

1. **Karuk Tribal Member,**
2. **Karuk Tribal Descendant,**
3. **Spouse or Parent of dependent Karuk Tribal Member,**
4. **Other Indians**
5. **Other Persons**

k. **Review of Product or Research Results/Study:** the proposal shall demonstrate a process whereby the KRAB will have an opportunity to review and have input into the product or results before publication. The final publication will then be sent to Karuk Tribal Council for approval. 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 Tribe 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 Karuk Tribe asserts a collective right to manage the above.

l. **Sovereign Immunity:** This Protocol with Agreement 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 with Agreement subjects or limits the sovereign rights of the Tribe.

Project Collaborator, Signature: _____

Project Collaborator, Name Printed: _____

Date: _____

Intellectual Property Agreement
Number: _____

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[i] This Protocol with Agreement borrows language from 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).