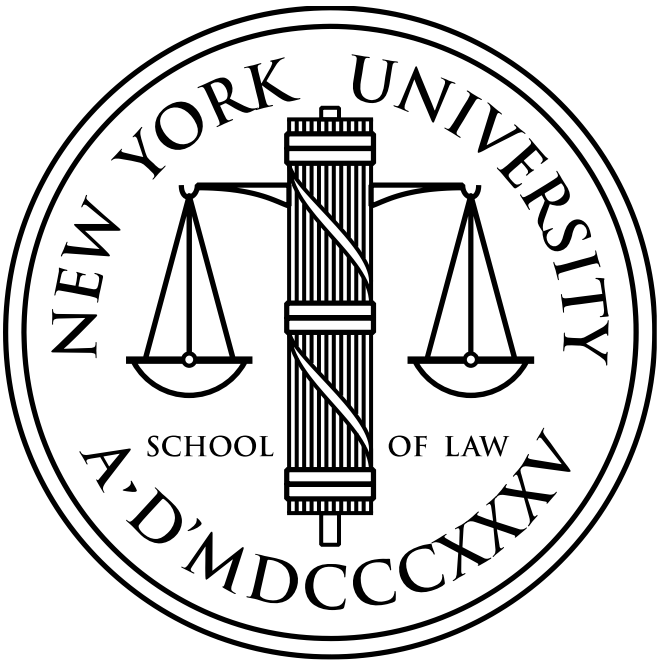
JIPEL

NYU Journal of Intellectual Property
& Entertainment Law

VOLUME 12 NUMBER 3



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NEW YORK UNIVERSITY

JOURNAL OF INTELLECTUAL PROPERTY AND ENTERTAINMENT LAW

VOLUME 12 | SPECIAL ISSUE | NUMBER 3

COPYRIGHT MANAGEMENT INFORMATION (CMI) AS A TOOL TO PROTECT INDIGENOUS CULTURAL WORKS

MEGAN KEENAN*

Indigenous communities have struggled with a long history of outsiders removing Cultural Works from Indigenous lands. This removal has led to a disconnect between Indigenous communities and their culture. Further, the disconnect impoverishes the public record of the cultural context surrounding these works. Many Indigenous communities are working to reconnect with Cultural Works that were removed. One such way is re-establishing the attribution of the Cultural Work. This attribution can take the form of a label affixed to the work. This article explores how § 1202 of the Copyright Act can be a tool to protect such labels. First, this article will look at the issues surrounding Indigenous communities and attribution and how Indigenous communities are working to reconnect with Cultural Works. Second, it will take a deep dive into § 1202 and how it can be used as an enforcement mechanism for the work that Indigenous communities are doing. Third, it will look at some of the imperfections of § 1202 as an enforcement mechanism for Indigenous communities.

INTRODUCTION 414
I. INDIGENOUS COMMUNITIES AND ATTRIBUTION 416
II. COPYRIGHT MANAGEMENT INFORMATION (CMI) AS A TOOL 418
A. *How the Law Defines CMI* 419
B. *How the Law Protects CMI* 420
C. *Damages* 422
D. *Application of CMI to Cultural Works* 422

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III. Inherent Limitations to the Applicability of CMI to Cultural Works 423
Conclusion 426

Introduction

In copyright, attribution has a long history of connecting authors[1] with their creative works. Attribution provides honor, pride, and recognition for the author.[2] It's seen as an author's right, bringing them recognition and acknowledgment for their work where it is due.[3] And attribution tethers an author to their creation, regardless of where any copy of the work moves. Indeed, as the work interacts with the world, an "author's name is embedded into institutional infrastructures, catalogues, and records and, through such, is also embedded in social and cultural memory[.]"[4] Thus, attribution can outlive the author, regardless of whether the work is still protected under copyright.

Attribution is an important issue that extends beyond the confines of copyright law and, more broadly, Western culture.[5] For example, attribution is an important issue in many Indigenous communities. However, Indigenous communities have been dealing with a long history of discrimination, exploitation and dispossession that has severed communities' access to their own Cultural Works, and in turn, attribution to those works.[6] As a result, what has developed over time is a

[1] In this article, "author" is used as defined within the context of U.S. copyright law. The protection of an author's creative work is derived from the Constitution: Congress has the power to promote the "Progress of Science and useful Arts, by securing for limited Times to *Authors* and Inventors the exclusive Right to their respective Writing." U.S. Const. art. 1, § 8, cl. 8 (emphasis added). The Supreme Court has defined an author as "he to whom anything owes its origin; originator; maker[.]" Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53, 58 (1884). Stating the proposition in another way, one is an author "if the resulting work is the product of one's own independent efforts, i.e., has not been copied." 1 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 1.06 (2022).

[2] U.S. Copyright Off., Authors, Attribution, and Integrity: Examining Moral Rights in the United States 34 (2019).

[3] *See, e.g.*, Jane Ginsburg, *The Right to Claim Authorship in U.S. Copyright and Trademarks Law*, 41 Hous. L. Rev. 263 (2004).

[4] Jane Anderson & Kimberly Christen, *Decolonizing Attribution: Traditions of Exclusion*, 5 J. Radical Librarianship 113, 124 (2019).

[5] *Id.*

[6] *E.g., Traditional knowledge – an answer to the most pressing global problems?*, U.N. Dep't of Econ. & Soc. Aff. (Apr. 22, 2019), https://www.un.org/development/desa/en/news/social/permanent-forum-on-indigenous-issues-2019.html. While copyright law can be a tool, it only applies to expressions of traditional knowledge that meet the requirements for protection under the Copyright Act.

troubling trend of disassociating Indigenous communities' Cultural Works from the community that a Cultural work originated from.

In recent years, Indigenous communities have been working to reclaim attribution of their Cultural Works. Communities have been working in conjunction with non-profits to label,[7] or document and share,[8] Cultural Works in a digital context. For example, some Indigenous Communities are affixing labels to their Cultural Works. These labels are digital. However, there has been little discussion about how the law, specifically copyright law, can help protect these efforts.

Many scholars have written extensively on how intellectual property law is inadequate, to protect indigenous communities' expressions of Cultural Works.[9] However, this paper takes a different approach. This paper will look at how Indigenous communities can use U.S. copyright law,[10] as it stands today, as a tool to enforce their rights to attribution in Cultural Works.

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17 U.S.C. § 102(a). This article will use the term "Cultural Works" to refer to the expressions of traditional knowledge that copyright law can protect, i.e., music, dance, art, designs, performances, ceremonies, architectural forms, and other expressions of culture protected by copyright law. Traditional knowledge "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." *Traditional Knowledge and Intellectual Property*, World Intell. Prop. Org. (2016), https://doi.org/10.34667/tind.28828; *see also Traditional Cultural Expressions*, World Intell. Prop. Org., https://www.wipo.int/tk/en/folklore/ (last visited May 15, 2023) (including examples of traditional knowledge protected by copyright).

[7] *See, e.g.*, *Local Contexts*, ENRICH, https://www.enrich-hub.org/local-contexts (last visited May 15, 2023) ("The Local Contexts Hub allows Indigenous communities to adapt Traditional Knowledge and Biocultural Labels to their needs and share them safely with institutions, researchers and data repositories. It also allows Institutions and Researchers to generate Notices and engage with Indigenous communities about the appropriate use of the Traditional Knowledge and Biocultural Labels.").

[8] *See, e.g.*, Murkutu, www.mukurtu.org (last visited May 15, 2023) ("Mukurtu (MOOK-oo-too) is a grassroots project aiming to empower communities to manage, share, and exchange their digital heritage in culturally relevant and ethically-minded ways. We are committed to maintaining an open, community-driven approach to Mukurtu's continued development. Our first priority is to help build a platform that fosters relationships of respect and trust.").

[9] *See generally*, Susy Frankel, *'Ka Mate Ka Mate' and the Protection of Traditional Knowledge*, *in* Intellectual Property at the Edge: The Contested Contours of Intellectual Property (Rochelle Dreyfuss & Jane Ginsburg eds., 2014); Anderson & Christen, *supra* note 4, at 116–24; Susy Frankel, Intellectual Property in New Zealand 120 (2d ed. 2011).

[10] The Copyright Act is silent as to whether it applies to tribal lands in the U.S. *See generally* 17 U.S.C.; Trevor Reed, *Creative Sovereignties: Should Copyright Apply on Tribal Lands?*, 67 J. Copyright Soc'y 313 (2021).

First, this paper will look at the problems that Indigenous communities have faced with copyright historically, and how communities are taking action to protect their Cultural Works. Second, this paper will suggest Copyright Management Information (CMI) as a tool for Indigenous communities to protect their attribution and enforce the inclusion of their attribution. Third, this paper will look at the restrictions that CMI poses in protecting Cultural Works and, if available, possible solutions to bridge the gap between where the law stands today.

I

Indigenous Communities and Attribution

Cultural Works are more than just art. These works are foundational to Indigenous Communities. Indeed, such works are the cornerstone of Indigenous identity and cultural heritage. Thus, such works are fundamental to the protection, preservation, and sustainability of the livelihoods of Indigenous peoples.[11]

Despite the Importance of Cultural Works, Indigenous communities have been dealing with a long history of outsiders of the community reappropriating these Cultural Works or removing them from Indigenous lands entirely. For example, an outsider would record a Cultural Work in the form of a song. By recording the song, the outsider was attributed to it and not the Indigenous individual.[12] Thus, within copyright law, the outsider was then considered the author of the work.

This misplaced attribution led to the outsider displacing the Indigenous individuals as the source of the Cultural Work. Not only did such ties displace the Indigenous author, but it also severed the ties between the Cultural Work and the community itself. Not only does this disconnection have a profound effect on Indigenous communities, but it also affects the public at large.

Disconnecting Indigenous communities from their Cultural Works negatively impacts them. When Indigenous peoples and communities do not have possession over their creative works, they become disassociated with the works. This disassociation has led to the decontextualization of many of the works, resulting

[11] U.N. Dep't of Econ. & Soc. Affs., *supra* note 6.
[12] Anderson & Christen, *supra* note 4, at 123.

in misuse and misappropriation.[13] And, decontextualization takes away from the work itself because it erases Indigenous relationships to the work, including attribution and culturally sensitive terms of use. Deliberate exclusion of Indigenous groups, misattribution, or non-attribution "profoundly affect how Indigenous peoples can participate in their own public and published narratives, how sovereignty can be enacted and maintained, how access to heritage is made possible, [and,] how histories and narratives can be retold[.]"[14]

Not only are the Indigenous communities deeply impacted by misplaced attribution, but the public at large suffers as well. Disconnecting Indigenous communities from their Cultural Works affects the public's ability to learn and understand Indigenous culture. The view of Cultural Works without any context for where such works originated, for what purposes the works were used, or who was included in the work, strips the works of cultural context and offers them to the public in isolation. Without this critical information, what can be understood about Indigenous culture is limited. This stripping of the proper attribution affects the visibility of Indigenous Peoples and diminishes how Indigenous histories and experiences are shared and inform a national narrative. The inaccurate attribution also harms the public at large as the public is disinherited from the Indigenous culture that is part of the broader U.S. history and culture.

Some Indigenous communities have been working to reclaim and associate with previously disconnected Cultural Works and to preserve the connection of new works. One example is Local Contexts, which works with Indigenous communities to attach digital labels to Cultural Works. Every unique community developed TK Label includes a permanent digital identifier that "support the inclusion of local protocols for access and use" of Cultural Works.[15] For example, these labels identify the Indigenous community form which a work originated from as well as additional information. The additional information includes whether a Cultural Work includes sacred or ceremonial material, has gender restrictions, or has seasonal conditions of use (e.g., a song that is to be played upon the first snowfall of the season). These labels allow Indigenous communities to remain connected,

[13] *Id.*

[14] *Id.* at 124.

[15] *TK Labels*, Local Contexts, https://localcontexts.org/labels/traditional-knowledge-labels/ (last visited May 15, 2023).

and to disseminate specific terms of use for sharing and engaging with Cultural Works.[16]

These efforts are important to reconnect Indigenous communities with their Cultural Works. Initiatives to provide *sui generis* means of attribution are imperative to reverse some of the harm that has been done to Indigenous communities. However, this method of attribution has a vulnerability. Namely, standing alone, it is not clear what will deter bad actors or indifferent bureaucratic systems from removing these labels once affixed onto a Cultural Work. Thus, exploring an area of law that can provide legal protection to these efforts may prove to be of great importance.

II

Copyright Management Information (CMI) as a Tool

While authors benefit from attribution, it is not an express right granted by the U.S. Copyright Act. Other countries see attribution as a natural law that arises "out of the inherent connection between authorial genius and literary offspring."[17] In contrast, in the U.S., an author must have some cause of action in positive law.

One U.S. law which takes steps to protect authors' attribution rights is 17 U.S.C. § 1202, which describes Copyright Management Information (CMI) and its protection under the law. § 1202 protects against the falsification and the removal or alteration of certain information, described as CMI. While not required, CMI's attribution -like properties are meant "to enable the public to more easily find and make authorized uses of copyrighted works."[18] While this is not a system meant to protect "the inherent connection between authorial genius and literary offspring[,]" it is one of the few sections within the U.S. Copyright Act that directly tackles any sort of attribution right.[19]

This section will look at how the law defines CMI, what the law protects CMI from, damages, and an application to labels on Cultural Works.

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[16] *Id.*

[17] 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 8D.03 (2022).

[18] Bruce A. Lehman, Intellectual Property and the National Information Infrastructure 235–36 (1995).

[19] *Cf.* 17 U.S.C. § 106(a).

A. How the Law Defines CMI

The definition of CMI is broad and protects a range of information meant to connect a copyright consumer with the copyright owner or author. The definition of CMI is broken into two parts, the types of information that may be considered as CMI and how that information is connected with the copyrightable work.

The first part of the CMI definition is comprised of a list of types of information qualifying as CMI. Many courts take the view that CMI's definition is broad.[20] The statute itself enumerates seven specific types of information that meet the first part of the definition of CMI, and one catch-all provision.[21] The types of information that is protected as CMI, and that make up the first part of the definition include the title and other information identifying a work;[22] the name of the author;[23] the name of the copyright owner;[24] name of a performer whose performance is fixed;[25] the terms and conditions for use of the work;[26] and identifying numbers or symbols.[27] So long as there is at least one of the types of information enumerated by the statute, then it meets the first part of the definition.

The information prong that makes up CMI can take many forms. To start, CMI does not need to be digital, but can also come in physical form.[28] Congress

[20] *See, e.g.*, Energy Intel. Grp., Inc. v. Kayne Anderson Cap. Advisors, L.P., 948 F.3d 261 (5th Cir. 2020); Murphy v. Millennium Radio Grp. L.L.C., 650 F.3d 295, 302 (3d Cir. 2011).

[21] 17 U.S.C. § 1202(c).

[22] 17 U.S.C. § 1202(c)(1) ("The title and other information identifying the work, including the information set forth on a notice of copyright.").

[23] 17 U.S.C. § 1202(c)(2) ("The name of, and other identifying information about, the author of a work.").

[24] 17 U.S.C. § 1202(c)(3) ("The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright."). A notice of copyright is the ©, the year of publication of the work, and the name or generally known alternative designation of the owner. 17 U.S.C § 401.

[25] 17 U.S.C. § 1202(c)(4) ("With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.").

[26] 17 U.S.C. § 1202(c)(6).

[27] 17 U.S.C. §§ 1202(c)(7), 401

[28] Some courts have found that analog data does not count. *See Textile Secrets Int'l, Inc. v. Ya-Ya Brand Inc.*, 524 F. Supp. 2d 1184, 1201 (C.D. Cal. 2007); *IQ Grp. v. Wiesner Publ'g, Inc.*, 409 F. Supp. 2d 587, 597 (D.N.J. 2006). However, other courts, namely courts of appeals, have come to different conclusions. *E.g., Murphy*, 650 F.3d at 304–05. Indeed, even a Senate report noted that "CMI need not be in digital form, but CMI in digital form is expressly included." S. Rep. No. 105–190, at 16 (1998). Therefore, it is accepted that CMI need not be digital, i.e., CMI can be digital or physical.

did not prescribe any specific method. This allows for a flexible threshold of what can be included as CMI, independent of technological advancements or changes. Examples of information that constituted CMI include gutter credits with photos,[29] watermarks[30] and PDF File names.[31] However, there is a circuit split about whether the context of the CMI matters.[32]

The second part of the CMI definition is that the CMI previously discussed, must be "conveyed in connection with" copies, phonorecords, performances, or displays of the work.[33] Courts have found that CMI must be on or next to the work.[34] For example, a gutter credit positioned below a photo in a publication fits within CMI.[35]

B. How the Law Protects CMI

Section 1202 protects against the falsification and the removal or alteration of CMI. To fall within the statutory requirement of false CMI, a violator must knowingly, provide false CMI, with the intent to induce, enable, facilitate, or conceal infringement.[36] In order to prevail on a claim of removal or alteration of CMI, a plaintiff must prove the following: (1) the existence of CMI in connection with a copyrighted work; and (2) that a defendant "distribute[d] . . . works [or] copies of works;" (3) while "knowing that [CMI] has been removed or altered without authority of the copyright owner or the law;" and (4) while "knowing,

[29] Mango v. Buzzfeed, Inc., 970 F.3d 167, 169 (2d Cir. 2020); *Murphy*, 650 F.3d at 302.

[30] McGucken v. Chive Media Grp., LLC, CV 18-01612-RSWL-KS, 2018 WL 3410095, at *4 (C.D. Cal. 2018).

[31] Energy Intel. Grp., Inc. v. Kayne Anderson Cap. Advisors, L.P., 948 F.3d 261 (5th Cir. 2020).

[32] *Compare Murphy*, 650 F.3d at 302 (defining CMI as "extremely broad, with no restrictions on the context in which such information must be used in order to qualify as CMI"), *with* Fischer v. Forrest, 968 F.3d 216, 224 (2d Cir. 2020) ("[T]he name of an author can, of course, constitute CMI when conveyed in connection with the relevant copyrighted work. 17 U.S.C. § 1202(c). But 'Fischer's' cannot be construed as CMI with respect to the advertising text at issue because it is simply the name of the product being described. In short: context matters.").

[33] 17 U.S.C. § 1202(c).

[34] *See* SellPoolSuppliesOnline.com, LLC v. Ugly Pools Ariz., Inc., 804 F. App'x 668, 670–71 (9th Cir. 2020); Logan v. Meta Platforms, Inc., No. 22-cv-01847-CRB, 2022 U.S. Dist. LEXIS 194431, at *21 (N.D. Cal. 2022).

[35] *Mango*, 970 F.3d at 169.

[36] 17 U.S.C. § 1202(b).

or … having reasonable grounds to know" that such distribution "will induce, enable, facilitate, or conceal an infringement."[37]

The false CMI test and the removal of CMI test both have a "double scienter" requirement. First, the bad actor must have knowingly removed or knowingly provided false CMI. This element does not require that the CMI-remover did so themselves. It is enough that the CMI-remover had knowledge that the CMI had been removed.[38]

The second scienter requirement is with the intent to induce, enable, facilitate, or conceal infringement. This does not require actual knowledge.[39] A CMI-remover's "awareness that distributing copyrighted material without proper attribution of CMI will conceal his own infringing conduct satisfies the DMCA's second scienter requirement."[40] And, § 1202 does not require proof that the CMI-remover knew, or had reason to know, of the downstream infringement.[41] This requirement is a limiting principle, ensuring that innocent accidents of removal are not actionable under the statute.

The statute's double scienter requirement of intent and knowing, is intended to counterbalance its otherwise broad definition of CMI. Therefore, the broad definition of CMI captures the diverse uses of CMI while other parts of the statute limit liability to bad actors. In the context of Indigenous communities, this flexibility protects Indigenous communities' attribution through CMI, without deterring others from interacting with their Cultural Works.

Further, an important aspect of CMI is that its protection is independent from the rights in the creative work. So, an Indigenous community can have works

[37] *Mango*, 970 F.3d at 171.

[38] Friedman v. Live Nation Merch., Inc., 833 F.3d 1180, 1187 (9th Cir. 2016).

[39] The word knowledge alone in the copyright act bears the dictionary definition meaning "'knowledge' has historically meant and still means the fact or condition of being aware of something." Unicolors, Inc. v. H&M Hennes & Mauritz, L.P., 142 U.S. 941, 946 (2022) (discussing knowledge of inaccurate information on a copyright registration). This is an example of congress imposing a scienter requirement that is not actual knowledge (civil remedies for certain acts performed by a person who knows or has "reasonable grounds to know" that he or she was facilitating infringement). *Id.* at 947; 17 U.S.C. § 1202(b).

[40] *Mango*, 970 F.3d at 172.

[41] *Id.* at 171 ("Because the plain language of the statute does not require such evidence, the district court did not err in finding BuzzFeed liable.").

publicly displayed or available for public use without necessarily forfeiting their right to protect the CMI if it is removed.

C. Damages

The strongest gain that an Indigenous community can obtain by implementing CMI is that the law has bite. In addition to an award of damages, §1203(b) provides for various kinds of affirmative relief in civil actions, such as temporary and permanent injunctions, impoundment, and, as part of a final judgment or decree finding a violation, the court may order remedial modification or destruction of the offending device or product.[42] Thus, Indigenous communities will have a strong enforcement mechanism should any CMI be knowingly removed from Cultural Works.

D. Application of CMI to Cultural Works

CMI's broad definition is why it can be an effective tool for Indigenous communities, especially for communities that are already using digital labels to identify and provide context to Cultural Works. But a formal label is not necessary. As courts have stated, even a PDF file name can constitute CMI, so long as it contains the qualifying information listed above. Indigenous communities that incorporate CMI into any type of naming or physical/digital embodiment of Cultural Works can strengthen the attribution through CMI's strong enforcement mechanisms.

Unfortunately, "[i]t is common practice in the digital world for CMI to be stripped from works, disconnecting a work from its authorship and ownership information[.]"[43] This is especially problematic for Indigenous communities who are reclaiming works removed from their communities or taking ownership of newly created works. Thus, understanding what § 1202 protects, and which remedies are available, is imperative to using CMI as an effective tool to protect Cultural Works.

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[42] 17 U.S.C. § 1203(b).

[43] U.S. Copyright Off., *supra* note 2, at 86.

III

Inherent Limitations to the Applicability of CMI to Cultural Works

While CMI can be used as a tool to protect attribution rights, it is inherently limited. Generally, these limitations are a product of the nature of copyright law. There are three main limitations to the applicability of CMI to Cultural Works.

First, authorship can be an obstacle in CMI claims. While §1203 allows "any person injured by a violation of § 1202" to bring suit,[44] the requirements of § 1202 contemplate whether the violator had authority from the copyright owner. CMI does not need to be personally affixed by the copyright owner.[45] Thus, one need not be the author of a work to have a cause of action under § 1202. A claim of removal or alteration of CMI is contingent on whether the removal or alteration was done without the authority of the copyright owner. In many instances, Cultural Works were removed from their communities of origin, and an individual or institution outside of the community took control of copyright ownership of the work. Thus, an Indigenous community attempting to assert a 1202 claim could have difficulty with proving that the violator did not have the authority of the copyright owner if that community does not already have a relationship with that outsider individual or institution.

Second, the nature of copyright law embodies western notions of property and individualism. At times, this can clash with Indigenous communities' values and relationship with Cultural Works. Further, historically, copyright law was used as a means to push Western concepts of property on Indigenous communities while simultaneously taking their property away.[46] For example, the concept of fixation in copyright law clashes with authorship in an Indigenous context. In Indigenous communities, authorship is not necessarily vested with an individual, the rights to the Cultural Works belong to the community.[47] But, in U.S. copyright law, authorship often vests with the individual – typically the individual that fixed a work in a tangible medium.

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[44] 17 U.S.C. § 1203(a).
[45] *Mango*, 970 F.3d at 171.
[46] *See* Anderson & Christen *supra* note 4, at 122–23.
[47] U.N. Dep't of Econ. & Soc. Affs., *supra* note 6, at 409.

The problem is that historically, outsiders fixed Indigenous Cultural Works, which make the outsider the author, rather than the Indigenous peoples captured in the photographs or recordings. The authorship conferred to the photographer, or the sound recordist functions as a complementary site of erasure of Indigenous peoples' presence."[48] Thus, an Indigenous community's ability to prove that its label was removed, or a label was falsified without the copyright owner's permission could lend itself to be an obstacle.

However, if these labels are being affixed in conjunction with the institution or individual that owns the copyright, despite the Cultural Work originating within an Indigenous community, then contractual agreements may be a method to solve any problem regarding authorship requirements.

Third, Indigenous communities may run into an issue with how the law defines CMI. While generally interpreted as broad, the definition of CMI may not be the right type of information that will properly attribute or connect an Indigenous community to all its Cultural Works. For example, it is not clear under the statute whether a digital label or label in general with only the originating Indigenous community's name would constitute CMI. However, one solution would be to utilize § 1202's catch all, i.e., any "other information as the Register of Copyrights may prescribe by regulation."[49] Should the Copyright Office decide that an Indigenous community's name, e.g., a tribal affiliation, is CMI, then that information would meet the definition. Such a promulgation would provide clarity to Indigenous communities and ensure that the attribution information that Indigenous communities need to stay connected with their Cultural Works will be protected in § 1202.

Although CMI is construed broadly by courts, it is still dependent upon copyrightability, and other specific information enumerated in § 1202. As a result, CMI may not protect all forms of attribution required by Indigenous communities. Still, there are actions that Indigenous communities can take to protect such information regardless of whether it falls within the auspices of CMI.

[48] *Id.*

[49] 17 U.S.C. § 1202(c)(8).

As a practical matter, however, although the law has a limited legal definition, additional information is more likely to be protected if is intermingled with at least one aspect of irrefutable CMI. Such protection is important because of the two most common ways CMI gets removed. One common way CMI is removed is by the willful infringer and the other is by the indifferent bureaucratic violator. Here, the second one is the bigger concern, but we will start with the willful infringer.

The willful infringer, willfully infringes on a copyright, knowing of their infringement, and they remove CMI to cover up their infringement. Typically, these infringers are taking specific isolated works. In contrast, the bureaucratic violator is someone who acts at scale, striping the CMI from many creative works. These violators strip meta data, crop photos, etc. These violators generally strip the creative works of all CMI because it is more efficient for them to do so. And, often times they have permission to use the work. These violators are generally internet platforms.

The harm caused by the willful infringer is clear: they infringed on the work and they stripped it of the CMI. The harm from the bureaucratic violator is that even though they do not necessarily infringe on the work, they do strip the works, in an Indigenous works context, of their culture, background, and association to the Indigenous communities from which they came. Because these violators are generally internet platforms, they can spread these decontextualized works rapidly, making the connection between the work and the Indigenous community hard to realize.

Generally, neither of these violators will spend time deciding what is CMI and what is not. They will simply remove all of the accompanying information. Thus, an Indigenous community can protect information that is questionable- or non-CMI, regardless of its classification, if it is comingled with undeniable CMI. Thus, Indigenous communities can protect information not covered under the auspices of CMI while still using CMI as an enforcement and protective mechanism.

Even though there are limitations to the use of CMI as a tool to protect labels attached to Cultural Works by Indigenous communities, CMI can still be a useful tool as part of the patchwork enforcement mechanism to protect these labels.

Conclusion

CMI is a tool to keep creative works connected to, and contextualized by, the Indigenous communities from which they originated. It gives these communities the ability to enforce their rights and obtain the statutorily available remedies. CMI as a protection and enforcement mechanism is a tool to reverse Indigenous erasure. It can serve as a direct tool for Indigenous communities to reclaim their cultural heritage through cultural terms of use, attribution, and norm-setting. In short, CMI can be a powerful tool to empower Indigenous communities to protect their Cultural Works.