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Classification of Indigenous Data Sovereignty and Data Privacy: Indigenous and Common Law Patterns

Cindy Tian, University of Notre Dame Law Library

On February 23, 2022, Jolande Goldberg, Senior Law Classification Specialist at the Library of Congress, gave a presentation for the Legal Cataloging Forum on the classification aspect of indigenous data sovereignty entitled *Information & Data: Information Society and Personal Rights & Interests. A Review of Indigenous, Common & Civil Law Classification Patterns*. In this presentation, Jolande discussed the changes and updates proposed to Library of Congress Classification K schedules for works on data sovereignty and information privacy. The presentation covered an extensive discussion on the subject matter including terminology, relationships, and hierarchies in the classification schedules (both global and regional scopes), open access to data, information justice, and classification patterns. This column will focus on indigenous data sovereignty and data privacy and their proposed updates in indigenous and common law classification schedules.

Indigenous Data Sovereignty

Indigenous data sovereignty is the right of a nation to govern the collection, ownership, and application of its own data.ⁱ Because indigenous data sovereignty derives from the inherent right of Native nations to govern their peoples, lands, and resources, it is not limited by geographic jurisdiction or digital form.ⁱⁱ In the US, promoting indigenous data sovereignty accords with the American Declaration on the Rights of Indigenous Peoples (2016) and the advocacies made by organizations such as the United States Indigenous Data Sovereignty Network (USIDSN) that was established to provide research and policy advocacy on decolonizing data and Indigenous data governance.ⁱⁱⁱ

The current K schedules do not have “Data sovereignty” or “Indigenous data sovereignty” in a caption, only as an “including” note under KIB1957 in Right to privacy under Law of indigenous peoples in Canada. Data sovereignty is “linked with indigenous peoples’ right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as their right to maintain, control, protect and develop their intellectual property over these.”^{iv} Jolande proposes the following class numbers for related works on these topics in the KI schedule (Law of indigenous peoples):

KI193 Collective rights and interests in indigenous data/Indigenous data sovereignty

Including ownership, governance, and access

KI195 Traditional cultural expressions and customs

Including art, music/song, storytelling, ceremonies, etc.

KI196 Ceremonial and funerary artifacts

KI197 Archaeological/historic sites, burial grounds, etc.

KIA 4.5.R4+ Rights and interests in Indigenous data (Data sovereignty)

KIM 70.3 Collective rights and interests in Indigenous data. Indigenous data sovereignty

Including ownership, governance and access

Note: works on indigenous peoples and intellectual property currently has class number K1401.5 in the general comparative law schedule. Jolande proposes adding KI193 within the Intangible personal property range in the indigenous law schedule and converting K1401.5 to the new KI193.

The other proposed new class numbers for related works in the general K schedule (Law in general, Comparative) also include:

K1401.7 Personal data. Rights and interests in data (Intangible personal property)

Including ownership, governance, and access

Cf. K 929 (Violation of privacy) under Torts

K1443.R5 Rights and interests in personal data

K1443.R5 is proposed under Copyright for works on personal data as a type of (intangible) intellectual property.

Jolande points out that US Law does not yet consider digital personal information/data in computer systems as a category of (intangible) intellectual property. An equivalent of K1443.R5 for the general United States law schedule (KF) has not been proposed.

Data privacy/Data protection

The general non-legal class number for Data privacy is HD30.3815. Jolande proposes adding the following new class numbers for data privacy and protection to be reflected in K schedules:

K929 Personal data in information retrieval systems and online (Data protection)

The current general comparative law schedule (K) does not have Data privacy or Data protection in a caption, just as keyword terms (“see” or “including” notes) under K3264.C65, K3560, and K7093.C66.

K929 is proposed under Torts in respect to the person. Once approved, violation of data privacy should class in K929 instead of the established K3264.C65 (Computers and privacy in Human rights) since torts do not class in human rights.

K630 Privacy

K630 is proposed under Personality and moral rights in general for the general K schedule. Works related to civil status, personality, and moral rights should class in K630 (once approved).

KI154 General works (Delicts, torts)

KI154.2 Violation of personality rights (General)

KI154.4 Violation of privacy. Violation of data privacy. Personal data in information retrieval systems and online (Data protection)

KI154 is proposed for general works under Delicts, torts in the KI schedule (Law of indigenous peoples in general). Works on violation of data privacy should class in KI154.4.

KI123 Privacy

KI123 is proposed for (data) privacy in indigenous law. In the general KI schedule, KI123 would go under “Particular branches and subjects of the law” among many other subjects. It might be advisable to provide more instructions that would help decide between classing a work in KI123 or KI154.4.

KF469 Privacy

Including data privacy

KF469 is proposed to be established under Personality rights of natural persons. Note the KF schedule has established class numbers for torts/violation of privacy (KF1262-1263).

KF5753.3 Data protection (Data privacy), Freedom of information

KF5753.3 is proposed to be used for works on data as government property. “Freedom of information” is currently used in the broader KF5753. Jolande proposes moving the caption phrase to the proposed new class number KF5753.3 and editing KF5753 to be General.

Other proposed new class numbers for data privacy and protection within the regional scope (North America, Central & South America) also include:

KIA 4.3.P+ (Right to Privacy)

KIA 4.4.V5++, to include Personal data in information retrieval systems

KIM 50 (Privacy. Personal data privacy)

KIM 58 (Violation of privacy and data privacy)

KIM 58.2 Personal data in information retrieval systems)

The concept of indigenous data sovereignty and data privacy are gaining momentum in the digital data landscape. Although the discussed proposals in the K classification schedules have not yet been officially approved, it is important for catalogers to deepen our understanding of this evolving topic and keep an eye out for the new establishments in the K schedules.

ⁱ “United States Indigenous Data Sovereignty Network,” accessed February 23, 2022, <https://usindigenousdata.org>.

ⁱⁱ Rainie, Stephanie Carroll, Desi Rodriguez-Lonebear, and Andrew Martinez. 2017. Policy Brief: Indigenous Data Sovereignty in the United States. Tucson: Native Nations Institute, University of Arizona. http://nni.arizona.edu/application/files/1715/1579/8037/Policy_Brief_Indigenous_Data_Sovereignty_in_the_United_States.pdf

ⁱⁱⁱ Organization of American States. *American Declaration on the Rights of Indigenous Peoples*, Santo Domingo: Dominican Republic, 2016. <https://www.oas.org/en/sare/documents/DecAmIND.pdf>; “United States Indigenous Data Sovereignty Network.”

^{iv} Kukutai, Tahu and John Taylor, ed., *Indigenous Data Sovereignty: Towards an Agenda* (Canberra: Australian National University Press, 2016), xxii.